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code of federal regulations

National Defense

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32

PARTS 700 TO 799

Revised as of July 1, 1982

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code of federal regulations

National Defense

32

PARTS 700 TO 799

Revised as of July 1, 1982

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Cite this Code **CFR**

thus: **32 CFR 700.101**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..... as of January 1
Title 17 through Title 27..... as of April 1
Title 28 through Title 41..... as of July 1
Title 42 through Title 50..... as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

THIS TITLE

Title 32—NATIONAL DEFENSE is composed of eight volumes. The parts in these volumes are arranged in the following order: Parts 1-39 (Volumes I, II and III), Parts 40-399, Parts 400-699, Parts 700-799, Parts 800-999, and Part 1000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1982, with the exception of Parts 1-39 (Volumes I, II and III).

The Armed Services Procurement Regulations (ASPR) comprise the first 3 volumes of Title 32. For the ASPRs the Code of Federal Regulations numbering system has been waived, for an explanation see the Explanation pages in Parts 1-39, Volumes I, II and III. A subject index for all the ASPRs appears in Volume III.

The current regulations issued by the Department of the Army appear in the volume containing Parts 400-699; those issued by the Department of the Navy appear in the volume containing Parts 700-799, and those issued by the Department of the Air Force appear in the two volumes containing Parts 800 to end.

For this volume Gary J. Bruegging was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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AUTHORITY: Section 6011 of Title 10, United States Code; 38 FR 7892, March 26, 1973.

SOURCE: 39 FR 7135, Feb. 25, 1974, unless otherwise noted.

Subpart A—The Department of the Navy

§ 700.101 Origin and authority.

(a) The naval affairs of the country began with the war for independence, the American Revolution. On 13 October 1775, Congress passed legislation forming a committee to purchase and arm two ships. This in effect created the Continental Navy. Two battalions of Marines were authorized on 10 No-

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vember 1775. Under the Constitution, the First Congress on 7 August 1789, assigned responsibility for the conduct of naval affairs to the War Department. On 30 April 1798, the Congress established a separate Navy Department with the Secretary of the Navy as its chief officer. On 11 July 1798, the U.S. Marine Corps was established as a separate service, and in 1834 was made a part of the Department of the Navy.

(b) The National Security Act of 1947, as amended, is the fundamental law governing the position of the Department of the Navy in the organization for national defense. In 1949, the Act was amended to establish the Department of Defense as an Executive Department, and to establish the Departments of the Army, Navy and Air Force (formerly established as Executive Departments by the 1947 Act) as military departments within the Department of Defense.

(c) The responsibilities and authority of the Department of the Navy are vested in the Secretary of the Navy, and are subject to his reassignment and delegation. The Secretary is bound by the provisions of law, the direction of the President and the Secretary of Defense, and, along with all Government agencies, the regulations of certain nondefense agencies in their respective areas of functional responsibility.

§ 700.102 Objectives.

The fundamental objectives of the Department of the Navy, within the Department of Defense, are (a) to organize, train, equip, prepare, and maintain the readiness of Navy and Marine Corps forces for the performance of military missions as directed by the President or the Secretary of Defense, and (b) to support Navy and Marine Corps forces, including the support of such forces and the forces of other military departments, as directed by the Secretary of Defense, which are assigned to unified or specified commands. Support, as here used, includes administrative, personnel, material and fiscal support, and technological support through research and development.

§ 700.103 Composition.

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense. It is composed of the executive part of the Department of the Navy; the Headquarters, United States Marine Corps; the entire operating forces, including naval aviation, of the United States Navy and of the United States Marine Corps, and the reserve components of those operating forces; and all shore activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy. It includes the United States Coast Guard when it is operating as a service in the Navy.

§ 700.104 The principal parts of the Department of the Navy.

(a) Functionally, organizationally and geographically the Department of the Navy has from practically the beginning of the Federal Government under the Constitution consisted of three parts: The Operating Forces of the Navy, the Navy Department, and the Shore Establishment.

(b) The operating forces of the Navy comprise the several fleets, sea-going forces, sea-frontier forces, district forces, Fleet Marine Forces, other assigned Marine Corps Forces, the Military Sealift Command, and other forces and activities that may be assigned thereto by the President or the Secretary of the Navy.

(c) The Navy Department refers to the central executive offices of the Department of the Navy located at the seat of the government. The Navy Department is organizationally comprised of the Office of the Secretary of the Navy which includes his Civilian Executive Assistants, Offices of his Assistants, and the headquarters organizations of the Office of Naval Research, the Office of the Judge Advocate General, and the Office of the Comptroller of the Navy; the Office of the Chief of Naval Operations, the Headquarters, United States Marine Corps; and, under the command of the Chief of Naval Operations, the Headquarters, Naval Material Command,

and the headquarters organizations of the Bureau of Naval Personnel and the Bureau of Medicine and Surgery. In addition, the Headquarters, United States Coast Guard, is included when the United States Coast Guard is operating as a service in the Navy.

(d) The shore establishment is comprised of shore activities with defined missions approved for establishment by the Secretary of the Navy.

§ 700.105 Definition of terms.

The following definitions shall apply to the regulations in this part:

(a) Command—(DOD) (1) The authority which a commander in the military service lawfully exercises over his subordinates by virtue of rank or assignment. Command includes the authority and responsibility for effectively using available resources and for planning the employment of, organizing, directing, coordinating, and controlling military forces for the accomplishment of assigned missions. It also includes responsibilities for health, welfare, morale, and discipline of assigned personnel.

(2) An order given by a commander; that is, the will of the commander expressed for the purpose of bringing about a particular action.

(3) A unit or units, an organization, or an area under the command of one individual.

(4) To dominate by a field of weaponfire or by observation from a superior position.

(b) Superior—A commander or officer in command of a senior force, unit, or organization in line of command. Also, a senior person in line of command.

(c) Flag and General Officers—Flag officer means an officer of the Navy or Coast Guard above the grade of captain. General officers means an officer of the Marine Corps, the Army, or the Air Force above the grade of colonel.

(d) Person in the naval service—Means a person, male or female, appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps. Also, same meaning for member of the naval service.

(e) Persons in the Department of the Navy—All persons in the naval service and civilians employed under the Department of the Navy.

(f) Ships—A classification of water-borne craft which comprises generally the oceangoing vessels and craft of the Navy, and such other water-borne craft as may be assigned this classification.

(g) Service Craft—A classification of water-borne craft which comprises generally the water-borne utilitarian craft not classified as ships or boats.

(h) Boats—A classification of water-borne craft which comprises generally the water-borne craft suitable primarily for shipboard and similar use.

(i) Active Status—A status of ships and service craft. Active status ships or service craft are assigned to the active fleets and to their supporting activities or are ships of the Military Sealift Command which are titled in the United States or are operated under long-term bareboat charter. Ships and service craft in active status are "in commission" or "in service."

(j) Inactive Status—A status of ships and service craft. Inactive status ships and service craft are in reserve and not currently required for duty in the active fleets or supporting forces. Ships and service craft in inactive status are "in commission, in reserve," or "in service, in reserve" or "out of commission, in reserve" or "out of service, in reserve."

(k) Special Status—A status of ships and service craft. Ships and service craft in special status shall include those units for which the Navy is charged with certain responsibilities by reason of custody or title, but which are not in the active or inactive status. Ships and service craft in special status are "in commission, special" or "in service, special" or "out of commission, special" or "out of service, special."

(l) Vessel—Includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. (1 U.S.C. 3).

(m) Naval Activity—A unit of the Department of the Navy, of distinct identity, and established under an officer in command or in charge.

(n) Naval Station—A naval activity on shore, having a commanding offi-

cer, and located in an area having fixed boundaries, within which all persons are subject to naval jurisdiction and immediate authority of the commanding officer.

[41 FR 18074, Apr. 30, 1976]

Subpart B—The Secretary of the Navy

§ 700.201 Responsibilities of the Secretary of the Navy.

The Secretary of the Navy is the head of the Department of the Navy. Under the direction, authority, and control of the Secretary of Defense, the Secretary of the Navy is responsible for the policies and control of the Department of the Navy, including its organization, administration, operation, and efficiency.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80277, Dec. 4, 1980]

§ 700.202 Succession to duties.

(a) When there is a vacancy in the Office of the Secretary of the Navy, or during the absence or disability of the Secretary, the Under Secretary of the Navy, and, in the order prescribed by the Secretary of the Navy, the Assistant Secretaries of the Navy succeed to the duties of the Secretary. If the Secretary does not prescribe an order for succession to the duties of that office, the Assistant Secretaries shall succeed to those duties after the Under Secretary in the order in which they took office as Assistant Secretaries.

(b) During the temporary absence of the above officials, the Chief of Naval Operations or, in his absence, the Vice Chief of Naval Operations succeeds to the duties of the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80277, Dec. 4, 1980]

§ 700.203 The Civilian Executive Assistants.

(a) The Civilian Executive Assistants to the Secretary of the Navy are the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the General Counsel of the Navy and the Deputy Under Secretary of the Navy. It is the policy of the Secretary to assign Department-wide responsibilities essential to the efficient administration of the Department of the Navy to and among his Civilian Executive Assistants.

(b) The Civilian Executive Assistants, within their respective areas of responsibility, are the principal advisers and assistants to the Secretary on the administration of the affairs of the Department of the Navy. In carrying out these duties, they shall do so in harmony with the statutory position of the Chief of Naval Operations as "the principal naval adviser and naval executive to the Secretary on the conduct of activities of the Department of the Navy" and the responsibilities of the Chief of Naval Operations and the Commandant of the Marine Corps as set forth in these regulations. The Civilian Executive Assistants are authorized and directed to act for the Secretary within their assigned areas of responsibility.

(c) The Under Secretary of the Navy is designated as the deputy and principal assistant to the Secretary of the Navy, and acts with full authority of the Secretary in the general management of the Department of the Navy, and supervision of offices and organizations as assigned by the Secretary.

(d) The Assistant Secretary of the Navy (Financial Management) is the Comptroller of the Navy, and is responsible for all matters related to the financial management of the Department of the Navy, including budgeting, accounting, disbursing, financing, progress and statistical reporting, auditing, management information systems, automatic data processing systems and equipment (less than integral to a weapons system), and supervision of offices and organizations as assigned by the Secretary. Under the Comptroller, the Deputy Comptroller of the Navy shall, in addition to performing other duties assigned, serve as an adviser and assistant to the Chief of Naval Operations and the Commandant of the Marine Corps with respect to financial and budgetary matters.

(e) The Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics) is responsible for the overall supervision of manpower and reserve component affairs of the Department of the Navy, including policy and ad-

ministration of affairs related to military (active and inactive) and civilian personnel; all stages of the acquisition of naval ships funded by the appropriation "Ships Construction, Navy"; all Department of the Navy acquisition programs following full scale production decision (Milestone III); the business, contractual, manpower, and logistic support aspects of the Department of the Navy Acquisition programs, including policy and administration of affairs related thereto; the maintenance, alteration, supply, distribution, and disposal of material; all transportation matters; the acquisition, construction, utilization, improvement alteration, maintenance, and disposal of real estate and facilities, including capital equipment utilities, housing, and public quarters; printing and publications; labor relations with respect to contractors with the Department of the Navy; industrial security; the Mutual Defense Assistance Program, as related to the supplying of material, including Foreign Military Sales; and supervision of offices and organizations as assigned by the Secretary.

(f) The Assistant Secretary of the Navy (Research, Engineering and Systems) is responsible for all technical aspects of all stages of Department of the Navy acquisition programs through the full-scale production decision (Milestone III), including policy and administration of affairs related thereto, with the exception of the acquisition of naval ships funded by the appropriation 'Ships Construction, Navy'; the technical aspects of the maintenance or alteration of material; all matters related to research, development, engineering, test, and evaluation efforts within the Department of the Navy, including management of the appropriation, 'Research, Development, Test and Evaluation, Navy'; oceanography; ocean engineering and closely related matters; and supervision of offices and organizations as assigned by the Secretary.

(g) The General Counsel of the Navy is responsible for providing legal advice, counsel, and guidance to the Secretary and the other Civilian Executive Assistants on any matter that they may direct or that the General Counsel determines should be brought to their attention. The General Counsel is also responsible for providing all necessary legal advice, counsel, and guidance to the staffs of the Secretary and the other Civilian Executive Assistants; the supervision of the Office of the General Counsel; and such other duties as the Secretary may assign. The responsibilities of the General Counsel are not intended to infringe upon, or interfere with, the responsibilities of the Judge Advocate General for the administration of military justice and such other matters as may be assigned to that officer by statute or by the Secretary.

(h) The Deputy Under Secretary of the Navy is responsible to the Secretary or Under Secretary for acting as a focal point and coordinator for the resolution of problems which require high-level special attention. In addition, the Deputy Under Secretary is the major claimant for funds and manpower supporting the Department of the Navy Secretariat, Staff Offices, and the Department of the Navy General Gift Fund. The Deputy Under Secretary is responsible for general over-sight, policy and procedure formulation and coordination regarding environmental matters affecting the Department of the Navy, with the exception of occupational health and safety and employee working conditions.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80277, Dec. 4, 1980]

§ 700.204 The staff assistants.

The Staff Assistants to the Secretary of the Navy are the Chief of Information; the Chief of Legislative Affairs; the Director, Office of Program Appraisal; and the heads of such other offices and boards as may be established by law or by the Secretary for the purpose of assisting the Secretary or one or more of the Civilian Executive Assistants in the administration of the Department of the Navy. The foregoing shall supervise all functions and activities internal to their offices and assigned shore activities, if any, and shall be responsible to the Secretary or to one of the Civilian Executive Assistants for the utilization of re-

sources by and the operating efficiency of all activities under their supervision. The duties of the individual Staff Assistants and their respective offices will be as provided by law or as assigned by the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.205 The Chief of Naval Research, The Judge Advocate General, The Deputy Comptroller of the Navy.

The Chief of Naval Research shall command the Office of Naval Research and assigned shore activities. The Judge Advocate General shall command the Office of the Judge Advocate General and assigned shore activities. The Deputy Comptroller of the Navy shall command the Office of the Comptroller of the Navy and assigned shore activities. Each of them shall be responsible to the Secretary of the Navy or to one of the Civilian Executive Assistants, as assigned, for the utilization of resources by and the operating efficiency of all activities under their respective commands. The duties of the Chief of Naval Research, the Judge Advocate General, and the Comptroller of the Navy will be as provided by law or as assigned by the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.206 Authority over organizational matters.

Subject to the approval of the Secretary of the Navy or guidance hereafter furnished by him, the Civilian Executive Assistants, the Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Research, the Judge Advocate General, the Deputy Comptroller of the Navy, and the Staff Assistants are individually authorized to organize, assign, and reassign responsibilities within their respective commands or offices in the organization of the Department of the Navy, including the establishment and disestablishment of such component organizations as may be necessary, subject to the following:

(a) The authority to disestablish may not be exercised with respect to any organizational component of the Department established by law.

(b) The Secretary retains the authority to approve the establishment of and disestablishment of shore activities, which will be done in accordance with procedures prescribed by the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

Subpart C—The Chief of Naval Operations

§ 700.301 Senior Military Officer of the Department of the Navy.

(a) The Chief of Naval Operations is the senior military officer of the Department of the Navy, and takes precedence above all other officers of the naval service, except an officer of the naval service who is serving as Chairman of the Joint Chiefs of Staff.

(b) The Chief of Naval Operations is the principal naval adviser to the President and to the Secretary of the Navy on the conduct of war, and the principal naval adviser and naval executive to the Secretary on the conduct of the activities of the Department of the Navy.

(c) The Chief of Naval Operations is the Navy member of the Joint Chiefs of Staff and is responsible, in coordination with the Commandant of the Marine Corps, for keeping the Secretary of the Navy fully informed on matters considered or acted upon by the Joint Chiefs of Staff. In this capacity, he is responsible, under the President and the Secretary of Defense, for duties external to the Department of the Navy, as prescribed by law.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.302 Succession to duties.

The Vice Chief of Naval Operations, and then the officers of the Navy, eligible for command at sea, on duty in the office of the Chief of Naval Operations in the order of their seniority, shall, unless otherwise directed by the President, perform the duties of the Chief of Naval Operations during his

absence, or disability, or in the event of a temporary vacancy in that office.

§ 700.303 Specific authority and duties of the Vice Chief of Naval Operations.

(a) The Vice Chief of Naval Operations has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Vice Chief of Naval Operations in performing such duties have the same force and effect as those issued by the Chief of Naval Operations.

(b) Orders issued by the Vice Chief of Naval Operations in performing other duties have the same force and effect as those issued by the Chief of Naval Operations.

§ 700.304 Authority and responsibility.

(a) Internal to the administration of the Department of the Navy, the Chief of Naval Operations, under the direction of the Secretary of the Navy, shall command the Operating Forces of the Navy. The Chief of Naval Operations shall also command the Naval Material Command, the Bureau of Naval Personnel, and the Bureau of Medicine and Surgery. In addition, he shall command such shore activities as may be assigned to him by the Secretary. He shall be responsible to the Secretary for the utilization of resources by, and the operating efficiency of, all commands and activities under his command.

(b) In addition, the Chief of Naval Operations has the following specific responsibilities:

(1) To organize, train, equip, prepare, and maintain the readiness of Navy forces, including those for assignment to unified or specified commands for the performance of military missions as directed by the President, the Secretary of Defense, or the Joint Chiefs of Staff. Naval forces, when assigned to a unified or specified command, are under the full operational command of the commander to whom they are assigned.

(2) To determine and direct the efforts necessary to fulfill current and future requirements of the Navy (less Fleet Marine Forces and other assigned Marine Corps forces) for manpower, material, weapons, facilities, and services, including the determination of quantities, military performance requirements, and times, places, and priorities of need.

(3) To exercise leadership in maintaining a high degree of competence among Navy officer and enlisted and civilian personnel in necessary fields of specialization, through education, training, and equal opportunities for personal advancement, and maintaining the morale and motivation of Navy personnel and the prestige of a Navy career.

(4) To plan and provide health care for personnel of the naval service and their dependents.

(5) To direct the organization, administration, training, and support of the Naval Reserve.

(6) To inspect and investigate components of the Department of the Navy to determine and maintain efficiency, discipline, readiness, effectiveness, and economy, except in those areas where such responsibility rests with the Commandant of the Marine Corps.

(7) To determine the needs of naval forces and activities for research, development, test, and evaluation; to plan and provide for the conduct of development, test, and evaluation which are adequate and responsive to long-range objectives, immediate requirements, and fiscal limitations; and to provide assistance to the Assistant Secretary of the Navy (Research and Development) in the direction, review, and appraisal of the overall Navy RDT&E Program to insure fulfillment of stated requirements.

(8) To formulate Navy strategic plans and policies and participate in the formulation of joint and combined strategic plans and policies and related command relationships.

(9) To budget for commands, bureaus, and offices assigned to the command of the Chief of Naval Operations, and other activities and programs as assigned, except as may be otherwise directed by the Secretary of the Navy.

(c) The Chief of Naval Operations, under the direction of the Secretary of the Navy, shall (except for those areas

wherein such responsibility rests with the Commandant of the Marine Corps) exercise overall authority throughout the Department of the Navy in matters related to the effectiveness of the support of the Operating Forces of the Navy, the coordination and direction of assigned Navy-wide programs and functions including those assigned by higher authority, the coordination of activities of the Department of the Navy in matters concerning effectiveness, efficiency, and economy, and matters essential to naval military administration, such as security, intelligence, discipline, communications, and matters related to the customs and traditions of the naval service.

§ 700.305 Naval Vessel Register, classification of naval craft, and status of ships and service craft.

(a) The Chief of Naval Operations shall be responsible for the Naval Vessel Register (except the Secretary of the Navy shall strike vessels from the Register) and the assignment of classification for administrative purposes to water-borne craft and the designation of status for each ship and service craft. The classification of water-borne craft and the status of ships and service craft are found in the glossary.

(b) Commissioned vessels and craft shall be called "United States Ship ——" or "U.S.S. ——".

(c) Civilian manned ships of the Military Sealift Command or other commands designated "active status, in service" shall be called "United States Naval Ship ——" or "U.S.N.S. ——".

(d) Ships and service craft designated "active status, in service," except those described by paragraph c of this article, shall be referred to by name, when assigned, classification, and hull number (e.g., "HIGHPOINT PCH-1" or "YOGN-8").

(e) The Chief of Naval Operations shall designate hospital ships and medical aircraft as he deems necessary. Such designation shall be in compliance with the Geneva Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of 12 August 1949 and he shall ensure compliance with the notice provisions of that Convention.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.306 The Chief of Naval Material.

The Chief of Naval Material, under the command of the Chief of Naval Operations, shall command the Naval Material Command. In addition to the tasks which may be assigned by the Chief of Naval Operations, he shall:

(a) Provide direct staff assistance to the Secretary of the Navy and the Civilian Executive Assistants in matters pertaining to contracting, procurement, production and exploratory development, laboratories assigned to the Chief of Naval Material and to related matters. In these areas, the Chief of Naval Material shall inform the Chief of Naval Operations and, when appropriate, the Commandant of the Marine Corps in matters of policy and significant actions.

(b) Be responsive directly to the Commandant of the Marine Corps in providing necessary planning and programming data requirements and in meeting those particular material support needs of the U.S. Marine Corps which are required to be provided by the Naval Material Command.

(c) Provide the Commandant of the Marine Corps with timely advice concerning training and technical requirements essential for the operation and maintenance by Marine Corps personnel of new equipment under development.

(1) Be responsive to the heads of other organizations in meeting their material support needs which are provided by the Naval Material Command.

(2) Provide guidance to Navy and Marine Corps Commands, as required, on functional areas related to Naval Material Command acquisition and logistics support responsibilities and other technical or professional matters as appropriate.

§ 700.307 The Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery.

The Chief of Naval Personnel, under the command of the Chief of Naval

Operations, shall command the Bureau of Naval Personnel. The Chief, Bureau of Medicine and Surgery, (who is also the Surgeon General of the Navy), under the command of the Chief of Naval Operations, shall command the Bureau of Medicine and Surgery. In addition to the tasks which may be assigned by the Chief of Naval Operations, they shall:

(a) Be responsive directly to the Commandant of the Marine Corps in meeting those particular needs of the United States Marine Corps which are required to be provided by their respective bureaus.

(b) Be responsive to the heads of other organizations in meeting the particular needs of such organizations which are provided by the Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery.

§ 700.308 Naval Inspector General.

There is in the Office of the Chief of Naval Operations the Office of the Naval Inspector General. The Naval Inspector General, when directed, shall inquire into and report upon any matter which affects the discipline or military efficiency of the Department of the Navy; however, the Secretary of the Navy shall direct inquiry when such matters are related to the Marine Corps. He shall make such inspections, investigations, and reports as the Secretary of the Chief of Naval Operations directs. The Naval Inspector General shall periodically propose programs of inspections to the Chief of Naval Operations and shall recommend additional inspections or investigations as may appear appropriate.

§ 700.309 Commander in Chief; U.S. Atlantic Fleet.

(a) The Commander in Chief of U.S. Atlantic Fleet is a naval commander in chief of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall command the U.S. Atlantic Fleet and is responsible for the administration, training, maintenance, support and readiness of the Atlantic Fleet including those forces temporarily assigned to the operational command of other commanders.

(b) The Commander in Chief U.S. Atlantic Fleet is a naval component commander of the unified command under the Commander in Chief, Atlantic.

(c) The organization of the Atlantic Fleet, the forces assigned and their employment shall be as specified by the Chief of Naval Operations except for the employment of forces assigned to the operational command of unified and specified commanders.

§ 700.310 Commander in Chief, U.S. Pacific Fleet.

(a) The Commander in Chief U.S. Pacific Fleet is a naval commander in chief of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall command the U.S. Pacific Fleet and is responsible for the administration, training, maintenance, support and readiness of the Pacific Fleet, including those forces temporarily assigned to the operational command of other commanders.

(b) The Commander in Chief U.S. Pacific Fleet is a naval component commander of the unified command under the Commander in Chief, Pacific.

(c) The organization of the Pacific Fleet, the forces assigned and their employment shall be as specified by the Chief of Naval Operations except for the employment of forces assigned to the operational command of unified and specified commanders.

§ 700.311 Commander in Chief; U.S. Naval Forces, Europe.

(a) The Commander in Chief U.S. Naval Forces, Europe is a naval commander in chief of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall represent the Chief of Naval Operations for U.S. naval matters in the general areas of Europe, North Africa, and the Middle East. He shall command those forces assigned by the Chief of Naval Operations or by other naval commanders.

(b) The Commander in Chief U.S. Naval Forces, Europe is the naval component commander of the unified com-

mand under the Commander in Chief, U.S. European Command.

§ 700.312 Commander, Military Sealift Command.

(a) The Commander, Military Sealift Command is a naval commander of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall provide ocean transportation for personnel and cargo of the Department of Defense (excluding that transported by units of the fleet) in accordance with policies and procedures of the Single Manager for Ocean Transportation (Secretary of the Navy) and the Secretary of Defense. He shall also operate ships in support of scientific projects and other programs for agencies or departments of the United States.

(b) The Military Sealift Command shall operate and maintain government owned ships and augment operational capability by shipping cargo and passengers on commercially operated ships, chartering ships, and exercising operational control over ships activated from National Defense Reserve Fleet to meet emergency needs.

§ 700.313 Commander, Naval Intelligence Command.

The Commander, Naval Intelligence Command, under the command of the Chief of Naval Operations, shall be responsible for directing and managing the activities of the Naval Intelligence Command to insure fulfillment of the intelligence, counterintelligence, investigative, and security requirements of the Department of the Navy.

§ 700.314 Commander, Naval Telecommunications Command.

The Commander, Naval Telecommunications Command, under the command of the Chief of Naval Operations, shall exercise overall responsibility throughout the Department of the Navy for the coordination of the provision, operation, and maintenance of adequate and secure naval communications.

[41 FR 18074, Apr. 30, 1976]

§ 700.315 Oceanographer of the Navy.

The Oceanographer of the Navy, within the Office of the Chief of Naval Operations, performs functions relating to external interfaces with national and international oceanographic organizations and bodies.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.316 Commander, Naval Oceanography Command.

The Commander, Naval Oceanography Command, under the command of the Chief of Naval Operations, shall be responsible for the management of assigned oceanographic, mapping, charting, geodetic and meteorological activities and efforts and shall provide technical guidance in such matters throughout the Department of the Navy.

[45 FR 80278, Dec. 4, 1980]

§ 700.317 Commander, Naval Security Group Command.

The Commander, Naval Security Group Command, under the command of the Chief of Naval Operations, shall be responsible for the provision, operation, and maintenance of an adequate Naval Security Group and shall perform cryptologic and related functions.

§ 700.318 Chief of Naval Education and Training.

The Chief of Naval Education and Training, under the command of the Chief of Naval Operations, shall be responsible for the training of Navy personnel, other than training assigned by the Chief of Naval Operations to other authorities, and for the training of Marine Corps aviation personnel.

[41 FR 18074, Apr. 30, 1976]

§ 700.319 Chief of Naval Reserve.

The Chief of Naval Reserve, under the command of the Chief of Naval Operations, shall be responsible for the administration of Naval Reserve programs, the management of Naval Reserve resources, and for logistic support of the Marine Corps air program.

§ 700.320 Commandants of Naval Districts.

(a) The Commandants of Naval Districts, under the command of the Chief of Naval Operations shall represent the Secretary of the Navy and the Chief of Naval Operations in such matters as may be assigned; to exercise area coordination authority and supervise and direct the effective execution of assigned area coordination responsibilities over all naval shore activities and personnel in the Naval Service in the naval district; to exercise command of assigned naval shore activities; to coordinate fleet support matters as assigned by Fleet Commanders in Chief; and to coordinate public affairs matters throughout the naval district and to perform such other functions as may be directed by the Chief of Naval Operations.

[41 FR 18074, Apr. 30, 1976, and 45 FR 80278, Dec. 4, 1980]

§ 700.321 President, Board of Inspection and Survey.

The President of the Board of Inspection and Survey, assisted by such other officers and such permanent and semipermanent sub-boards as may be designated by the Secretary of the Navy, shall:

(a) Conduct acceptance trials and inspections of all ships and service craft prior to acceptance for naval service.

(b) Conduct acceptance trials and inspections on one or more aircraft of each type or model prior to final acceptance for naval service.

(c) Examine at least once every three years, if practicable, each naval ship to determine its material condition and, if found unfit for continued service, report to higher authority.

(d) Perform such other inspections and trials of naval ships, service craft, and aircraft as may be directed by the Chief of Naval Operations.

Subpart D—The Commandant of the Marine Corps

§ 700.401 Senior officer of the Marine Corps.

(a) The Commandant of the Marine Corps is the senior officer of the United States Marine Corps.

(b) The Commandant of the Marine Corps is the Marine Corps member of the Joint Chiefs of Staff and is responsible, in coordination with the Chief of Naval Operations, for keeping the Secretary of the Navy fully informed on matters considered or acted upon by the Joint Chiefs of Staff. In this capacity, he is responsible, under the President and the Secretary of Defense, for duties external to the Department of the Navy, as prescribed by law.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.402 Succession to duties.

The Assistant Commandant of the Marine Corps, and then the officers of the Marine Corps, not restricted in the performance of duty, on duty at the headquarters of the Marine Corps in the order of their seniority, shall, unless otherwise directed by the President, perform the duties of the Commandant of the Marine Corps during his absence, disability, or in the event of a temporary vacancy in that office.

§ 700.403 Authority and responsibilities.

(a) The Commandant of the Marine Corps, under the direction of the Secretary of the Navy, shall command the United States Marine Corps, which shall include Headquarters, United States Marine Corps; the Operating Forces of the Marine Corps; Marine Corps Supporting Establishments and the Marine Corps Reserve.

(b) The Commandant of the Marine Corps advises the Secretary of the Navy on matters pertaining to the Marine Corps. He is directly responsible to the Secretary for the administration, discipline, internal organization, training, requirements, efficiency, and readiness of the Marine Corps; for the operation of the Marine Corps material support system; and the total performance of the Marine Corps. He shall command such shore activities as may be assigned by the Secretary, and is responsible to the Secretary for the utilization of resources by and the operating efficiency of all activities under his command. When performing these functions, the Commandant is not a part of the command structure

of the Chief of Naval Operations. There must, however, be a close cooperative relationship between the Chief of Naval Operations, as the senior military officer of the Department of the Navy, and the Commandant, as the one having command responsibility over the Marine Corps.

(c) The Commandant of the Marine Corps is directly responsible to the Chief of Naval Operations for the organization, training, and readiness of those elements of the Operating Forces of the Marine Corps assigned to the Operating Forces of the Navy. Such Marine Corps forces, when so assigned, are subject to the command exercised by the Chief of Naval Operations over the Operating Forces of the Navy. Likewise, members or organizations of the Navy, when assigned to the Marine Corps, are subject to the command of the Commandant of the Marine Corps.

§ 700.404 Specific responsibilities.

In addition, the Commandant of the Marine Corps has the following specific responsibilities:

(a) To plan for and determine the support needs of the Marine Corps for equipment, weapons or weapons systems, materials, supplies, facilities, maintenance, and supporting services. This responsibility includes the determination of Marine Corps characteristics of equipment and material to be procured or developed, and the training required to prepare Marine Corps personnel for combat. It also includes the operation of the Marine Corps Material Support System.

(b) To budget for the Marine Corps, except as may be otherwise directed by the Secretary of the Navy.

(c) To develop, in coordination with other military services, the doctrines, tactics, and equipment employed by landing forces in amphibious operations.

(d) To formulate Marine Corps strategic plans and policies and participate in the formulation of joint and combined strategic plans and policies and related command relationships.

(e) To plan for and determine the present and future needs, both quantitative and qualitative, for personnel, including reserve personnel and civilian personnel, of the United States Marine Corps. This includes responsibility for leadership in maintaining a high degree of competence among Marine Corps officers and enlisted personnel and Marine Corps civilian personnel in necessary fields of specialization through education, training, and equal opportunities for personal advancement; and for leadership in maintaining the morale and motivation of Marine Corps personnel and the prestige of a career in the Marine Corps.

(f) To plan for and determine development requirements of the Marine Corps. To provide for the development, test, and evaluation of new weapon systems and equipment, to ensure that such are adequate and responsive to immediate and long-range objectives and are within available resources. To provide direct staff assistance to the Assistant Secretary of the Navy (Research and Development) in the direction, review, and appraisal of the overall USMC RDT&E Program.

(g) To plan for and determine the needs for health care for personnel of the Marine Corps and their dependents.

§ 700.405 Composition of the Marine Corps.

(a) The major components of the regular establishment of the Marine Corps consist principally of the Headquarters of the Marine Corps, the Operating Forces, and the Supporting Establishment. In addition, there is another element of the Marine Corps, the Marine Corps Reserve.

(b) The Operating Forces of the Marine Corps include the Fleet Marine Forces, detachments afloat, and security forces. There are two Fleet Marine Forces: Fleet Marine Force, Atlantic, and Fleet Marine Force, Pacific. These Fleet Marine Forces are assigned to, and are integral to, the U.S. fleets as part of the Operating Forces of the Navy.

(c) The Supporting Establishment includes those Marine Corps facilities, such as Marine Corps schools, recruit depots, supply installations, bases, barracks, air stations and other miscellaneous small activities which train,

maintain, and support the Operating Forces of the Marine Corps.

(d) The Marine Corps Reserve has as its mission to provide a trained force of qualified officers and enlisted personnel to be available for active duty in the U.S. Marine Corps in time of war or national emergency.

§ 700.406 Relationships between the Commandant of the Marine Corps and the Chief of Naval Material.

Formal operating relationships with respect to the efforts of determining needs and providing support between the Commandant of the Marine Corps and his organization and the Chief of Naval Material and his organization shall be governed by the following principles:

(a) The Commandant of the Marine Corps shall express to the Chief of Naval Material those Marine Corps material needs which are to be provided by the Naval Material Command. With respect to the development of material items, the Commandant of the Marine Corps shall specify the military performance required to meet Marine Corps needs.

(b) The Chief of Naval Material shall advise the Commandant of the Marine Corps as to the economic and technological feasibility of meeting such needs, and shall keep the Commandant informed of new capabilities to meet the needs of the Marine Corps which may or may not have been previously expressed. With respect to the development of material items, the Chief of Naval Material shall determine the technical effort necessary to satisfy the needs of the Marine Corps.

(c) The Commandant of the Marine Corps shall select the work to be done to satisfy the needs of the Marine Corps, based upon feasibility data and current estimates of the worth of a particular need in relation to other desirable needs, including, where necessary, the curtailment or cancellation of work already in progress in favor of work which offers greater promise or greater military worth.

(d) The Chief of Naval Material shall exercise appropriate supervision over accomplishment of the work selected, and shall insure that resources available to him are efficiently utilized in meeting Marine Corps needs.

(e) Work being accomplished shall be reviewed concurrently by the Commandant of the Marine Corps from the viewpoint of readiness and military worth, and by the Chief of Naval Material from the viewpoint of progress and the efficient utilization of resources available to him.

§ 700.407 Serving with the Army by order of the President.

(a) When Marine Corps units are, by order of the President, detached for service with the Army, the Commandant of the Marine Corps is, for the time that the Marine Corps units are thus detached and for the purposes of administering the affairs of such units, responsible to the Secretary of the Army. The Commandant of the Marine Corps shall retain such control and jurisdiction over said detached forces as will enable him to make the necessary transfers of officers and men from and to the commands, and to exercise general supervision over all expenditures and supplies needed for the support of the Marine Corps forces so detached. He shall be responsible to the Secretary of the Army for the general efficiency and discipline of such units of the Marine Corps as are detached for service with the Army.

(b) Official correspondence which relates exclusively to the routine business of the Marine Corps and does not involve questions of administrative responsibility under the supervision of the commanding officer of the combined forces, and which is not a matter of a military nature pertaining to an individual requiring the action of said commanding officer, shall be forwarded direct between the Headquarters of the Marine Corps and the senior Marine officer serving with the detached forces.

(c) All official correspondence regarding the personnel of the Marine Corps units on duty with the Army shall be addressed to the proper representative of the Marine Corps and forwarded via the Adjutant General of the Army.

Subpart E—The United States Coast Guard (When Operating As a Service of the Navy)

§ 700.501 Relationship and operation as a service in the Navy.

(a) Upon declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall be subject to the orders of the Secretary of the Navy. While so operating as a service in the Navy and to the extent practicable Coast Guard operations shall be integrated and uniform with Navy operations.

(b) Whenever the Coast Guard operates as a service in the Navy:

(1) Applicable appropriations of the Coast Guard to cover expenses shall be available for transfer to the Department of the Navy and supplemented, as required, from applicable appropriations of the Department of the Navy.

(2) Personnel of the Coast Guard shall be eligible to receive gratuities, medals, and other insignia of honor on the same basis as personnel in the naval service or serving in any capacity with the Navy.

§ 700.502 Commandant of the Coast Guard.

(a) The Commandant of the Coast Guard is the senior officer of the United States Coast Guard.

(b) When reporting in accordance with Section 3, Title 14, U.S. Code to the Secretary of the Navy, the Commandant of the Coast Guard will further report to the Chief of Naval Operations for military functions. The Chief of Naval Operations shall represent the Coast Guard as a member of the Joint Chiefs of Staff.

§ 700.503 Duties and responsibilities.

In exercising command over the Coast Guard while operating as a service of the Navy, the Commandant shall:

(a) Organize, train, prepare and maintain the readiness of the Coast Guard to function as a specialized service in the Navy for the performance of military missions, as directed.

(b) Plan for and determine the present and future needs of the Coast Guard, both quantitative and qualitative, for personnel, including reserve personnel.

(c) Budget for the Coast Guard, except as may be otherwise directed by the Secretary of the Navy.

(d) Plan for and determine the support needs of the Coast Guard for equipment, materials, weapons or weapons systems, supplies, facilities, maintenance, and supporting services.

(e) Exercise essential military administration of the Coast Guard. This includes, but is not limited to, such matters as security, discipline, intelligence, communications, personnel records and accounting conforming, as practicable, to Navy procedures.

(f) Enforce or assist in enforcing Federal laws on the high seas and on waters subject to the jurisdiction of the United States.

(g) Administer, promulgate and enforce regulations for the promotion of safety of life and property on the high seas and on waters subject to the jurisdiction of the United States. This applies to those matters not specifically delegated by law to some other executive department.

(h) Develop, establish, maintain and operate, with due regard to the requirements of national defense, aids to maritime navigation, ice breaking facilities, and rescue facilities for the promotion of safety on and over the high seas and waters subject to the jurisdiction of the United States.

(i) Engage in oceanographic research on the high seas and in waters subject to the jurisdiction of the United States in coordination with the Office of the Oceanographer of the Navy.

(j) Continue in effect under the Secretary of the Navy those other functions, powers and duties vested in him by appropriate orders and regulations of the Secretary of Transportation on the day prior to the effective date of transfer of the Coast Guard to the Department of the Navy until specifically modified or terminated by the Secretary of the Navy.

Subpart F—Commanders in Chief and Other Commanders

§ 700.601 Titles of commanders.

(a) The commander of a principal organization of the Operating Forces of the Navy, as determined by the Chief of Naval Operations, or the officer who has succeeded to such command as provided elsewhere in these regulations, shall have the title "Commander in Chief." The name of the organization under his command shall be added to form his official title.

(b) The commander of each other organization of units of the Operating Forces of the Navy, or organization of units of shore activities, shall have the title "Commander," "Commandant," "Commanding General," or other appropriate title. The name of the organization under his command shall be added to form his official title.

§ 700.602 Responsibility and authority of a commander.

(a) A commander shall be responsible for the satisfactory accomplishment of the mission and duties assigned to his command. His authority shall be commensurate with his responsibilities. Normally, he shall exercise authority through his immediate subordinate commanders; but he may communicate directly with any of his subordinates.

(b) A commander shall insure that subordinate commands are fully aware of the importance of strong, dynamic leadership and its relationship to the overall efficiency and readiness of naval forces. A commander shall exercise positive leadership and actively develop the highest qualities of leadership in persons with positions of authority and responsibility throughout his command.

(c) Subject to orders of higher authority, a commander shall issue such regulations and instructions as may be necessary for the proper administration and operation of his command.

(d) A commander shall hold the same relationship to his flagship, or to a shore activity of his command in which his headquarters may be located, in regard to its internal administration and discipline, as to any other ship or shore activity of his command.

§ 700.603 To announce assumption of command.

Upon assuming command, a commander shall so advise appropriate superiors, and the units of his command. When appropriate to his command he shall also advise the senior commanders of other United States armed services and officials of other Federal agencies and foreign governments located within the area encompassed by his command, concerning his assumption of command.

§ 700.604 Readiness.

A commander shall take all practicable steps to maintain his command in a state of readiness to perform its mission. In conformity with the orders and policies of higher authority, he shall:

(a) Organize the forces and resources under his command and assign duties to his principal subordinate commanders.

(b) Prepare plans for the employment of his forces to meet existing and foreseeable situations.

(c) Collaborate with the commanders of other United States armed services and with appropriate officials of other Federal agencies and foreign governments located within the area encompassed by his command.

(d) Maintain effective intelligence and keep himself informed of the political and military aspects of the national and international situation.

(e) Make, or cause to be made, such inspections as necessary to ensure the readiness, effectiveness, and efficiency of the components of his command.

§ 700.605 Observance of international law.

At all times a commander shall observe, and require his command to observe, the principles of international law. Where necessary to fulfillment of this responsibility, a departure from other provisions of Navy Regulations is authorized.

Subpart G—The Commanding Officer

§ 700.701 Applicability.

In addition to commanding officers, the provisions of this chapter shall apply, where pertinent, to aircraft commanders, officers in charge (including warrant officers and petty officers when so detailed) and those persons standing the command duty.

§ 700.702 Responsibility.

(a) The responsibility of the commanding officer for his command is absolute, except when, and to the extent, relieved therefrom by competent authority, or as provided otherwise in these regulations. The authority of the commanding officer is commensurate with his responsibility. While he may, at his discretion, and when not contrary to law or regulations, delegate authority to his subordinates for the execution of details, such delegation of authority shall in no way relieve the commanding officer of his continued responsibility for the safety, well-being, and efficiency of his entire command.

(b) A commanding officer who departs from his orders or instructions, or takes official action which is not in accordance with such orders or instructions, does so upon his own responsibility and shall report immediately the circumstances to the officer from whom the prior orders or instructions were received.

(c) The commanding officer shall be responsible for economy within his command. To this end he shall require from his subordinates a rigid compliance with the regulations governing the receipt, accounting, and expenditure of public money and materials, and the implementation of improved management techniques and procedures.

(d) The commanding officer and his subordinates shall exercise leadership through personal example, moral responsibility, and judicious attention to the welfare of persons under their control or supervision. Such leadership shall be exercised in order to achieve a positive, dominant influence on the performance of persons in the Department of the Navy.

§ 700.703 [Reserved]

§ 700.704 Organization of commands.

All commands and other activities of the Department of the Navy shall be organized and administered in accordance with law, the Navy Regulations, and the orders of competent authority, and all orders and instructions of the commanding officer shall be in accordance therewith.

§§ 700.705—700.708 [Reserved]

§ 700.709 Unauthorized persons on board.

The commanding officer shall satisfy himself that there is no unauthorized person on board before proceeding to sea or commencing a flight.

§ 700.710 Control of passengers.

(a) Control of passage in and protracted visits to aircraft and ships of the Navy by all persons, within or without the Department of the Navy, shall be exercised by the Chief of Naval Operations.

(b) Nothing in this article shall be interpreted as prohibiting the senior officer present from authorizing the passage in ships and aircraft of the Navy by such persons as he judges necessary in the public interest or in the interest of humanity. The senior officer present shall report the circumstances to the Chief of Naval Operations when he gives such authorization.

§ 700.711 Authority over passengers.

Except as otherwise provided in these regulations or in orders from competent authority, all passengers in a ship or aircraft of the naval service are subject to the authority of the commanding officer and shall conform to the internal regulations and routine of the ship or aircraft. The commanding officer of such ship or aircraft shall take no disciplinary action against a passenger not in the naval service, other than that authorized by law; but he may, when he deems such action to be necessary for the safety of the ship or aircraft or of any persons embarked, subject a passenger not in the naval service to such restraint as the circumstances require until such

time as delivery to the proper authorities is possible. A report of the matter shall be made to an appropriate superior of the passenger.

§ 700.712 [Reserved]

§ 700.713 Person found under incriminating circumstances.

(a) The commanding officer shall keep under restraint or surveillance, as necessary, any person not in the armed services of the United States who is found under incriminating or irregular circumstances within the command, and shall immediately initiate an investigation.

(b) Should an investigation indicate that such person is not a fugitive from justice or has not committed or attempted to commit an offense, he shall be released at the earliest opportunity, except:

(1) If not a citizen of the United States, and the place of release is under the jurisdiction of the United States, the nearest federal immigration authorities shall be notified as to the time and place of release sufficiently in advance to permit them to take such steps as they deem appropriate.

(2) Such persons shall not be released in territory not under the jurisdiction of the United States without first obtaining the consent of the proper foreign authorities, except where the investigation shows that he entered the command from territory of the foreign state, or that he is a citizen or subject of that state.

(c) If the investigation indicates that such person has committed or attempted to commit an offense punishable under the authority of the commanding officer, the latter shall take such action as he deems necessary.

(d) If the investigation indicates that such a person is a fugitive from justice, or has committed or attempted to commit an offense which requires actions beyond the authority of the commanding officer, he shall, at the first opportunity, deliver such person, with full descriptive data, fingerprints, and a statement of the circumstances to the proper civil authorities.

(e) A report shall be made promptly to the Secretary of the Navy, in all cases under paragraph 4 of this article, and in other cases where appropriate.

[39 FR 7135, Feb. 25, 1974, as amended at 41 FR 21775, May 28, 1976]

§ 700.714 Rules for visits.

(a) Commanding officers are responsible for the control of visitors to their commands and shall comply with the relevant provisions of the Department of the Navy Security Manual for Classified Information and other pertinent directives.

(b) Commanding officers shall take such measures and impose restrictions on visitors as necessary to safeguard the classified material under their jurisdiction. Arrangements for general visiting shall always be based on the assumption that foreign agents will be among the visitors.

(c) Commanding officers and others officially concerned shall exercise reasonable care to safeguard the persons and property of visitors to naval activities as well as taking those necessary precautions to safeguard the persons and property within his command.

§ 700.715 Dealers, tradesmen, and agents.

(a) In general, dealers or tradesmen or their agents shall not be admitted within a command, except as authorized by the commanding officer:

(1) To conduct public business.

(2) To transact specific private business with individuals at the request of the latter.

(3) To furnish services and supplies which are necessary and are not otherwise, or are insufficiently, available to the personnel of the command.

(b) Personal commercial solicitation and the conduct of commercial transactions are governed by policies of Department of Defense.

§ 700.716 Marriages on board.

The commanding officer shall not perform a marriage ceremony on board his ship or aircraft. He shall not permit a marriage ceremony to be performed on board when the ship or aircraft is outside the territory of the United States, except:

(a) In accordance with local laws and the laws of the state, territory, or dis-

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trict in which the parties are domiciled, and

(b) In the presence of a diplomatic or consular official of the United States, who has consented to issue the certificates and make the returns required by the consular regulations.

§ 700.717 Postal matters.

Commanding officers shall ensure that mail and postal funds are administered in accordance with instructions issued by the Postmaster General and approved for the naval service by the Chief of Naval Operations, and instructions issued by the Chief of Naval Operations or the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate; and that postal clerks or other persons authorized to handle mail perform their duties strictly in accordance with those instructions.

§§ 700.718—700.719 [Reserved]

§ 700.720 Deaths.

The commanding officer, in the event of death of any person within his command, shall ensure that the cause of death and the circumstances under which death occurred are established, and the appropriate casualty report is submitted.

§ 700.721 The American National Red Cross.

(a) Pursuant to the request of the Secretary of the Navy and subject to such instructions as he may issue, the American National Red Cross is authorized to conduct a program of welfare, including social, financial, and medical and dental aid, for naval personnel; to assist in matters pertaining to prisoners of war; and to provide such other services as are appropriate functions for the Red Cross. The American National Red Cross is the only volunteer society authorized by the Government to render medical and dental aid to the armed forces of the United States. Other organizations desiring to render medical and dental aid may do so only through the Red Cross.

(b) Requests for Red Cross services shall be made to the Chief of Naval Personnel or the Commandant of the Marine Corps or, in the case of medical services, to the Chief, Bureau of Medicine and Surgery.

(c) Activities and personnel of the American National Red Cross in areas subject to naval jurisdiction shall conform to such administrative regulations as may be prescribed by appropriate naval authority.

(d) Red Cross personnel shall be considered to have the status of commissioned officers, subject to such restrictions as may be imposed by the Chief of Naval Personnel or the Commandant of the Marine Corps.

§§ 700.722—700.723 [Reserved]

§ 700.724 Maintenance of Logs.

(a) A deck log and an engineering log shall be maintained by each ship in commission, and by such other ships and craft as may be designated by the Chief of Naval Operations.

(b) A compass record shall be maintained as an adjunct to the deck log. An engineer's bell book shall be maintained as an adjunct to the engineering log.

(c) The Chief of Naval Operations shall prescribe regulations governing the contents and preparation of the deck and engineering logs and adjunct records.

[41 FR 18074, Apr. 30, 1976]

§ 700.725 Status of Logs.

The deck log, the engineering log, the compass record, and the engineer's bell book shall each constitute an official record of the command.

[41 FR 18074, Apr. 30, 1976]

§ 700.726 Records.

The commanding officer shall require that records relative to personnel, material, and operations as required by current instructions are maintained properly by those responsible therefor.

§§ 700.727—700.728 [Reserved]

§ 700.729 Delivery of personnel to civil authorities and service of subpoena or other process.

(a) Commanding officers or other persons in authority shall not deliver

any person in the naval service to civil authorities except as provided by the Manual of the Judge Advocate General.

(b) Commanding officers are authorized to permit the service of subpoena on other process as provided by the Manual of the Judge Advocate General.

§§ 700.730—700.732 [Reserved]

§ 700.733 Responsibility of a master of an in-service ship of the Military Sealift Command.

In an in-service ship of the Military Sealift Command, the master is responsible for the safety of his ship and all persons on board. He is responsible for the safe navigation and technical operation of his ship and has paramount authority over all persons on board. The master is responsible for the preparation of the abandoned ship bill and has exclusive authority to order the ship abandoned. He has full authority to enforce appropriate laws of the United States and all applicable orders and regulations of the Navy, Military Sealift Command, and the Office of Personnel Management.

[39 FR 7135, Feb. 25, 1974, as amended at 47 FR 28370, June 30, 1982]

§ 700.734 Relations with merchant seamen.

When in foreign waters, the commanding officer, with the approval of the senior officer present, may receive on board as supernumeraries for rations and passage:

(a) Distressed seamen of the United States for passage to the United States, provided they bind themselves to be amenable in all respects to Navy Regulations.

(b) As prisoners, seamen from merchant vessels of the United States, provided that the witnesses necessary to substantiate the charges against them are received, or adequate means adopted to ensure the presence of such witnesses on arrival of the prisoners at the place where they are to be delivered to the civil authorities.

§ 700.735 [Reserved]

§ 700.736 Physical security.

(a) The commanding officer shall take action to protect and maintain the security of the command from the dangers of attack, sabotage or other actions of subversive or militant groups or of any person with intent to do harm.

(b) The commanding officer shall take action to protect and maintain the security of the command against dangers from fire, windstorms, or other acts of nature.

§ 700.737 Effectiveness for service.

The commanding officer shall:

(a) Exert every effort to maintain his command in a state of maximum effectiveness for war or other service consistent with the degree of readiness as may be prescribed by proper authority. Effectiveness for service is directly related to state of personnel and material readiness.

(b) Make himself aware of the progress of any repairs, the status of spares, repair parts and other components, personnel readiness and other factors or conditions that could lessen the effectiveness of his command. When the effectiveness is lessened appreciably it shall be reported to appropriate superiors.

§§ 700.738—700.739 [Reserved]

§ 700.740 Search by foreign authorities.

(a) The commanding officer shall not permit a ship under his command to be searched on any pretense whatsoever by any person representing a foreign state, nor permit any of the personnel within the confines of his command to be removed from the command by such person, so long as he has the capacity to repel such act. If force should be exerted to compel submission, he is to resist that force to the utmost of his power.

(b) Except as may be provided by international agreement, the commanding officer of a shore activity shall not permit his command to be searched by any person representing a foreign state, nor permit any of the personnel within the confines of his command to

be removed from the command by such person, so long as he has the power to resist.

§§ 700.741—700.746 [Reserved]

§ 700.747 Status of boats.

(a) Boats shall be regarded in all matters concerning the rights, privileges, and comity of nations as part of the ship or aircraft to which they belong.

(b) In ports where war, insurrection or armed conflict exists or threatens, the commanding officer shall:

(1) Require that boats away from the ship or aircraft have some appropriate and competent person in charge.

(2) See that steps are taken to make their nationality evident at all times.

§ 700.748 [Reserved]

§ 700.749 Work, facilities, supplies, or services for other Government departments, State or local governments, foreign governments, private parties and morale, welfare, and recreational activities.

(a) Work may be done for or facilities, supplies, or services furnished to departments and agencies of the Federal and State governments, local governments, foreign governments, private parties, and morale, welfare, and recreational activities with the approval of a commanding officer provided:

(1) The cost does not exceed limitations the Secretary of the Navy may approve or specify; and,

(2) In the case of private parties, it is in the interest of the government to do so and there is no issue of competition with private industry; and,

(3) In the case of foreign governments a disqualification of a government has not been issued for the benefits of this article.

(b) Work shall not be started nor facilities, supplies, or services furnished, morale, welfare, and recreational activities not classified as instrumentalities of the United States, or state or local governments or private parties until funds to cover the estimated cost have been deposited with the commanding officer or unless otherwise provided by law.

(c) Work shall not be started nor facilities, supplies, or services furnished other Federal Government departments and agencies, or expenses charged to non-appropriated funds of morale, welfare, and recreational activities classified as instrumentalities of the United States until reimbursable funding arrangements have been made.

(d) Work, facilities, supplies, or services furnished non-appropriated fund activities classified as instrumentalities of the United States in the Navy Comptroller Manual shall be funded in accordance with regulations of the Comptroller of the Navy.

(e) Supplies or services may be furnished to naval vessels and military aircraft of friendly foreign governments (unless otherwise provided by law or international treaty or agreement):

(1) On a reimbursable basis without an advancement of funds, when in the best interest of the United States;

(i) Routine port services (including pilotage, tugs, garbage removal, line-handling, and utilities) in territorial waters or waters under United States control,

(ii) Routine airport services (including air traffic control, parking, servicing, use of runways),

(iii) Miscellaneous supplies (including fuel, provisions, spare parts, and general stores) but not ammunition. Supplies are subject to approval of the cognizant fleet or force commanders when provided overseas,

(iv) With approval of Chief of Naval Operations in each instance, overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to vessels and military aircraft.

(2) Routine port and airport services may be furnished at no cost to the foreign government concerned where such services are provided by persons of the naval service without direct cost to the Department of the Navy.

(f) In cases of emergency involving possible loss of life or valuable property, work may be started or facilities furnished prior to authorization, or provision for payment, but in all such cases a detailed report of the facts and

circumstances shall be made promptly to the Secretary of the Navy or the appropriate authority.

(g) Charges and accounting for any work, supplies, or services shall be as prescribed in the Navy Comptroller Manual.

§§ 700.750—700.751 [Reserved]

§ 700.752 Responsibility for safety of ships and craft at a naval station or shipyard.

(a) The commanding officer of a naval station or shipyard shall be responsible for the care and safety of all ships and craft at such station or shipyard not under a commanding officer or assigned to another authority, and for any damage that may be done by or to them. In addition, the commanding officer of a naval station or shipyard shall be responsible for the safe execution of work performed by that activity upon any ship located at the activity.

(b) It shall be the responsibility of the commanding officer of a ship in commission which is undergoing overhaul, or which is otherwise immobilized at a naval station or shipyard, to request such services as are necessary to ensure the safety of the ship. The commanding officer of the naval station or shipyard shall be responsible for providing requested services in a timely and adequate manner.

(c) When a ship or craft not under her own power is being moved by direction of the commanding officer of a naval station or shipyard, that officer shall be responsible for any damage that may result therefrom; the pilot or other person designated for the purpose shall be in direct charge of such movement, and all persons on board shall cooperate with and assist the pilot as necessary. Responsibility for such actions in a private shipyard will be assigned by contract to the contractor.

(d) When a ship operating under her own power is being drydocked, the commanding officer shall be fully responsible for the safety of his ship until the extremity of the ship first to enter the drydock reaches the dock sill and the ship is pointed fair for entering the drydock. The docking officer shall then take charge and complete the docking, remaining in charge until the ship has been properly landed, bilge blocks hauled, and the dock pumped down. In undocking, the docking officer shall assume charge when flooding the dock preparatory to undocking is started, and shall remain in charge until the extremity of the ship last to leave the dock clears the sill, and the ship is pointed fair for leaving the drydock, when the ship's commanding officer shall assume responsibility for the safety and control of the ship.

(e) When a naval ship is to be drydocked in a private shipyard under a contract being administered by a supervisor of shipbuilding, the responsibilities of the commanding officer are the same as in the case of drydocking in a naval shipyard. The responsibilities for the safety of the actual drydocking, normally assigned to the commanding officer of a naval shipyard through his docking officer, will be assigned by contract to the contractor. The supervisor of shipbuilding is responsible, however, for ensuring that the contractor's facilities, methods, operations, and qualifications meet the standards of efficiency and safety prescribed by Navy directives.

(f) If the ship is elsewhere than at a naval station or shipyard, the relationship between the Commanding officer and the supervisor of shipbuilding, or other appropriate official, shall be the same as that between the commanding officer and the commanding officer of a naval station or shipyard as specified in this article.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80279, Dec. 4, 1980]

§ 700.753 Ships and craft in drydock.

(a) The commanding officer of a ship in drydock shall be responsible for effecting adequate closure, during such periods as they will be unattended, of all openings in the ship's bottom upon which no work is being undertaken by the docking activity. The commanding officer of the docking activity shall be responsible for the closing, at the end of working hours, of all valves and other openings in the ship's bottom upon which work is being un-

dertaken by the docking activity, when such closing is practicable.

(b) Prior to undocking, the commanding officer of a ship shall report to the docking officer any material changes in the amount and location of weights on board which have been made by the ship's force while in dock, and shall ensure, and so report, that all sea valves and other openings in the ship's bottom are properly closed. The level of water in the dock shall not be permitted to rise above the keel blocks prior to receipt of this report. The above valves and openings shall be tended during flooding of the dock.

(c) When a ship or craft, not in commission, is in a naval drydock, the provisions of this article shall apply, except that the commanding officer of the docking activity or his representative shall act in the capacity of the commanding officer.

(d) When a naval ship or craft is in drydock in a private shipyard, responsibility for actions normally assigned by the commanding officer of the docking activity will be assigned by contract to the contractor.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80279, Dec. 4, 1980]

§ 700.754 Pilotage.

(a) The commanding officer shall:

(1) Pilot the ship under all ordinary circumstances, but he may employ pilots whenever in his judgment such employment is prudent.

(2) Not call a pilot on board until the ship is ready to proceed.

(3) Not retain a pilot on board after the ship has reached her destination or point where pilot is no longer required.

(4) Give preference to licensed pilots.

(5) Pay pilots no more than the local rates.

(b) A pilot is merely an adviser to the commanding officer. His presence on board shall not relieve the commanding officer or any of his subordinates from their responsibility for the proper performance of the duties with which they may be charged concerning the navigation and handling of the ship. For an exception to the provisions of this paragraph, see "Rules and Regulations Covering Navigation of the Panama Canal and Adjacent Waters," which directs that the pilot assigned to a vessel in those waters shall have control of the navigation and movement of the vessel. Also see the provisions of these regulations concerning the navigation of ships at a naval shipyard or station, or in entering or leaving drydock.

§ 700.755 Safe navigation and regulations governing operation of ships and aircraft.

(a) The commanding officer is responsible for the safe navigation of his ship or aircraft except as prescribed otherwise in these regulations for ships at a naval shipyard or station in drydock, or in the Panama Canal. In time of war or armed conflict, or in exercises simulating war or armed conflict, competent authority may modify the use of lights or other safeguards required by law to prevent collisions at sea, in port, or in the air. In exercises, such modifications will be employed only when ships or aircraft clearly will not be hazarded.

(b) Professional standards and regulations governing ship handling, safe navigation, safe anchoring and related operational matters shall be promulgated by the Chief of Naval Operations.

(c) Professional standards and regulations governing the operation of naval aircraft and related matters shall be promulgated by the Chief of Naval Operations or the Commandant of the Marine Corps as appropriate.

§ 700.756 Duties of the prospective commanding officer of a ship.

(a) Except as may be prescribed by the Chief of Naval Operations, the prospective commanding officer of a ship not yet commissioned shall have no independent authority over the preparation of the ship for service by virtue of his assignment to such duty, until the ship is commissioned and transferred to his command. As the prospective commanding officer, he shall:

(1) Procure from the commander of the naval shipyard or the supervisor of shipbuilding the general arrangement plans of the ship, and all the

pertinent information relative to the general condition of the ship and the work being undertaken on the hull, machinery, and equipment, upon reporting for duty.

(2) Inspect the ship as soon after reporting for duty as practicable, and frequently thereafter, in order to keep himself informed of the state of her preparation for service. If, during the course of these inspections, he notes an unsafe or potentially unsafe condition, he shall report such condition to the commander of the naval shipyard or the supervisor of shipbuilding and to his superior for resolution.

(3) Keep himself informed as to the progress of the work being done, including tests of equipment, and make such recommendations to the commander of the naval shipyard or the supervisor of shipbuilding as he deems appropriate.

(4) Ensure that requisitions are submitted for articles to outfit the ship which are not otherwise being provided.

(5) Prepare the organization of the ship.

(6) Make such reports as may be required by higher authority, and include therein a statement of any deficiency in material or personnel.

(b) If the prospective commanding officer does not consider the ship in proper condition to be commissioned at the time the commander of the naval shipyard or the supervisor of shipbuilding signifies his intention of transferring the ship to him, he shall report that conclusion with his reasons therefor, in writing, to the commander of the naval shipyard or the supervisor of shipbuilding and to the appropriate higher authority.

(c) If the ship is elsewhere than at a naval shipyard, the relationship between the prospective commanding officer and the supervisor of shipbuilding, or other appropriate official, shall be the same as that between the prospective commanding officer and the commander of a naval shipyard as specified in this article.

§ 700.757 Authority of the commanding officer or prospective commanding officer of a naval nuclear powered ship.

The Chief of Naval Operations shall be responsible for providing the commanding officer or prospective commanding officer of a naval nuclear powered ship with the authority and direction necessary to carry out his responsibilities for the safety of the ship and crew, and the health and safety of the general public in surrounding area.

§ 700.758 Inspection incident to commissioning of ships.

When a ship is to be commissioned, the authority designated to place such ship in commission shall, just prior to commissioning, cause an inspection to be made to determine the cleanliness and readiness of the ship to receive its crew and outfit. In the case of the delivery of a ship by a contractor, the above inspection shall precede acceptance of the ship. A copy of the report of this inspection shall be furnished the officer detailed to command the ship and to appropriate commands, bureaus or offices.

§§ 700.759—700.762 [Reserved]

§ 700.763 Quarantine.

(a) The commanding officer or aircraft commander of a ship or aircraft shall comply with all quarantine regulations and restrictions, United States or foreign, for the port or area within which his ship or aircraft is located.

(b) Whether or not liable to quarantine, the commanding officer shall afford every facility to visiting health officers, United States or foreign, and shall give all information required by the latter, insofar as permitted by the requirements of military security.

(c) The commanding officer shall allow no intercourse with a port or area or with other ships or aircraft until he has consulted local health authorities when:

(1) Doubt exists as to the sanitary regulations or health conditions of the port or area.

(2) A quarantine condition exists aboard his ship or aircraft.

(3) Coming from a suspected port or area, or one actually under quarantine.

(d) No concealment shall be made of any circumstance that may subject a ship or aircraft of the Navy to quarantine.

(e) Should there appear at any time on board a ship or aircraft conditions which present a hazard of introduction of a communicable disease outside the ship or aircraft, the commanding officer or aircraft commander shall at once report the fact to the senior officer present, to other appropriate higher authorities and, if in port, to the health authorities having quarantine jurisdiction. He shall prevent all contracts likely to spread disease until pratique is received. The commanding officer of a ship in port shall hoist the appropriate signal.

§ 700.764 Customs and immigration inspections.

(a) The commanding officer or aircraft commander shall facilitate any proper examination which it may be the duty of a customs officer or an immigration officer of the United States to make on board the ship or aircraft under his command. He shall not permit a foreign customs officer or an immigation officer to make any examination whatsoever, except as hereinafter provided, on board the ship, aircraft, or boats under his command.

(b) When a ship or aircraft of the Navy or a public vessel manned by naval personnel and operating under the direction of the Department of the Navy is carrying cargo for private commercial account, such cargo shall be subject to the local customs regulations of the port, domestic or foreign, in which the ship or aircraft may be, and in all matters relating to such cargo, the procedure prescribed for private merchant vessels and aircraft shall be followed. Government-owned stores or cargo in such ship or aircraft not landed nor intended to be landed nor in any manner trafficked in, are, by the established precedent of international courtesy, exempt from customs duties, but a declaration of such stores or cargo, when required by local customs regulations, shall be made. Commanding officers shall prevent, as far as possible, disputes with the local authorities in such cases, but shall protect the ship or aircraft and the Government-owned stores and cargo from any search or seizure.

(c) Upon arrival from a foreign country, at the first port of entry in United States territory, the commanding officer, or the senior officer of ships or aircraft in company, shall notify the collector of the port. Each individual aboard shall, in accordance with customs regulations, submit a list of articles purchased or otherwise acquired by him abroad. Dutiable articles shall not be landed until the customs officer has completed his inspection.

(d) Commanding officers of naval vessels and aircraft transporting United States civilian and foreign military and civilian passengers shall satisfy themselves that the passenger clearance requirements of the Immigration and Naturalization Service are complied with upon arrival at points within the jurisdiction of the United States. Clearance for such passengers by an immigration officer is necessary upon arrival from foreign ports and at the completion of movements between any of the following: Continental United States (including Alaska and Hawaii), Canal Zone, Puerto Rico, Virgin Islands, Guam, American Samoa, or other outlying places subject to United States jurisdiction. Commanding officers prior to arriving shall advise the cognizant naval or civilian port authority of the aforementioned passengers aboard and shall detain them for clearance as required by the Immigration and Naturalization Service.

(e) The provisions of this article shall not be construed to require delaying the movements of any ship or aircraft of the Navy in the performance of the assigned duty.

§ 700.765 Environmental pollution.

The commanding officer shall cooperate with local, state and other governmental authorities in the prevention, control and abatement of environmental pollution to the extent resources and operational considerations permit. He shall be aware of existing policies regarding polution control and

he should recommend remedial measures when appropriate.

§§ 700.766—700.767 [Reserved]

§ 700.768 Care of ships, aircraft, vehicles and their equipment.

The commanding officer shall cause such inspections and tests to be made and procedures carried out as are prescribed by competent authority, together with such others as he deems necessary to ensure the proper preservation, repair, maintenance, and operation of any ship, aircraft, vehicle, and their equipment assigned to his command.

Subpart H—Precedence, Authority, and Command

§ 700.811 Exercise of authority.

(a) All persons in the naval service on active service, and those on the retired list with pay, and transferred members of the Fleet Reserve and the Fleet Marine Corps Reserve, are at all times subject to naval authority. While on active service they may, if not on leave of absence except as noted below, on the sick list, taken into custody, under arrest, suspended from duty, in confinement, or otherwise incapable of discharging their duties, exercise authority over all persons who are subordinate to them.

(b) A person in the naval service, although on leave, may exercise authority:

(1) When in a naval ship or aircraft and placed on duty by the commanding officer or aircraft commander.

(2) When in a ship or aircraft of the armed services of the United States, other than a naval ship or aircraft, as the commanding officer of naval personnel embarked, or when placed on duty by such officer.

(3) When senior officer at the scene of a riot or other emergency, or when placed on duty by such officer.

§§ 700.812—700.816 [Reserved]

§ 700.817 Authority of an officer who succeeds to command.

(a) An officer who succeeds to command due to incapacity, death, departure on leave, detachment without relief, or absence due to orders from competent authority of the officer detailed to command has the same authority and responsibility as the officer whom he succeeds.

(b) An officer who succeeds to command during the temporary absence of the commanding officer shall make no changes in the existing organization, and shall endeavor to have the routine and other affairs of the command carried on in the usual manner.

(c) When an officer temporarily succeeding to command signs official correspondence, the word "Acting" shall appear below his signature.

§§ 700.818—700.829 [Reserved]

§ 700.830 Authority of a sentry.

A sentry, within the limits stated in his orders, has authority over all persons on his post.

§§ 700.831—700.833 [Reserved]

§ 700.834 Orders to active service.

(a) No person who is not on active service or leave of absence shall be ordered into active service or on duty without permission of the Commandant of the Marine Corps, or the Chief of Naval Personnel, except:

(1) In the case of a person on leave of absence by the officer who granted the leave or a superior.

(2) By the senior officer present on a foreign station.

(b) In the event that the senior officer present of a foreign station issues any orders as contemplated by this article, he shall report the facts, including the reasons for issuing such orders, to the Chief of Naval Personnel or the Commandant of the Marine Corps, without delay.

(c) Retired officers of the Navy and Marine Corps may be ordered to active service, with their consent, in time of peace. In time of war or a national emergency, such retired officers may, at the discretion of the Secretary of the Navy, be ordered to active service.

Subpart I—The Senior Officer Present

SOURCE: 39 FR 7220, Feb. 25, 1974 unless otherwise noted.

§ 700.901 The senior officer present.

Unless some other officer has been so designated by competent authority, the "senior officer present" is the senior line officer of the Navy on active duty, eligible for command at sea, who is present and in command of any part of the Department of the Navy in the locality or within an area prescribed by competent authority, except where personnel of both the Navy and the Marine Corps are present on shore and the officer of the Marine Corps who is in command is senior to the senior line officer of the Navy. In such cases, the officer of the Marine Corps shall be the senior officer present on shore.

§ 700.902 [Reserved]

§ 700.903 Authority and responsibility.

At all times and places not excluded in these regulations, or in orders from competent authority, the senior officer present shall assume command and direct the movements and efforts of all persons in the Department of the Navy present, when, in his judgment, the exercise of authority for the purpose of cooperation or otherwise is necessary. He shall exercise his authority in a manner consistent with the full operational command vested in the commanders of unified or specified commands.

§ 700.904 Authority of senior officer of the Marine Corps present.

The authority and responsibility of the senior officer present are also conferred upon the senior commanding officer of the Marine Corps present with respect to those units of the Marine Corps, including Navy personnel attached, which are in the locality and not under the authority of the senior officer present.

§§ 700.905—700.921 [Reserved]

§ 700.922 Shore patrol.

(a) When liberty is granted to any considerable number of persons, except in an area that can absorb them without danger of disturbance or disorder, the senior officer present shall cause to be established, temporarily or permanently, in charge of an officer, a sufficient patrol of officers, petty officers, and noncommissioned officers to maintain order and suppress any unseemly conduct on the part of any person on liberty. The senior patrol officer shall communicate with the chief of police or other local officials and make such arrangements as may be practicable to aid the patrol in carrying out its duties properly. Such duties may include providing assistance to military personnel in relations with civil courts and police, arranging for release of service personnel from civil authorities to the parent command, and providing other services that favorably influence discipline and morale.

(b) A patrol shall not be landed in any foreign port without first obtaining the consent of the proper local officials. Tact must be used in requesting permission; and, unless it is given willingly and cordially, the patrol shall not be landed. If consent cannot be obtained, the size of liberty parties shall be held to such limits as may be necessary to render disturbances unlikely.

(c) Officers and men on patrol duty in a foreign country normally should not be armed. In the United States, officers and men may be armed as prescribed by the senior officer present.

(d) No officer or man who is a member of the shore patrol or beach guard, or is assigned in support thereof, shall partake of or indulge in any form of intoxicating beverage or other form of intoxicant while on duty, on post, or at other times prescribed by the senior patrol officer. The senior patrol officer shall ensure that the provisions of this paragraph are strictly observed and shall report promptly in writing to the senior officer present all violations of these provisions that may come to his notice. All officers and men of the patrol shall report to the senior patrol officer all violations of the provisions of this paragraph on the part of those under them.

§ 700.923 Precautions for health.

The senior officer present shall take precautions to preserve the health of the persons under his authority. He shall obtain information regarding the healthfulness of the area and medical

facilities available therein and shall adopt such measures as are required by the situation.

§§ 700.924—700.934 [Reserved]

§ 700.935 Exercise of power of consul.

When upon the high seas or in any foreign port where there is no resident consul of the United States, the senior officer present afloat has the authority to exercise all powers of a consul in relation to mariners of the United States.

§§ 700.936—700.939 [Reserved]

§ 700.940 Granting of asylum and temporary refuge.

(a) If an official of the Department of the Navy is requested to provide asylum or temporary refuge, the following procedures shall apply:

(1) On the high seas or in territories under exclusive United States jurisdiction (including territorial seas, the Commonwealth of Puerto Rico, territories under United States administration, and possessions):

(i) At his request, an applicant for asylum will be received on board any naval aircraft or water-borne craft, Navy or Marine Corps activity or station.

(ii) Under no circumstances shall the person seeking asylum be surrendered to foreign jurisdiction or control, unless at the personal direction of the Secretary of the Navy or higher authority. Persons seeking political asylum should be afforded every reasonable care and protection permitted by the circumstances.

(2) In territories under foreign jurisdiction (including foreign territorial seas, territories, and possessions):

(i) Temporary refuge shall be granted for humanitarian reasons on board a naval aircraft or water-borne craft, Navy or Marine Corps activity or station, only in extreme or exceptional circumstances wherein life or safety of a person is put in imminent danger, such as pursuit by a mob. When temporary refuge is granted, such protection shall be terminated only when directed by the Secretary of the Navy or higher authority.

(ii) A request by foreign authorities for return of custody of a person under the protection of temporary refuge will be reported to the CNO or Commandant of the Marine Corps. The requesting foreign authorities will be informed that the case has been referred to higher authorities for instructions.

(iii) Persons whose temporary refuge is terminated will be released to the protection of the authorities designated in the message authorizing release.

(iv) While temporary refuge can be granted in the circumstances set forth above, permanent asylum will not be granted.

(v) Foreign nationals who request assistance in forwarding requests for political asylum in the United States will be advised to apply in person at the nearest American Embassy or Consulate.

(3) The Chief of Naval Operations or Commandant of the Marine Corps, as appropriate, will be informed by the most expeditious means of all action taken pursuant to paragraphs (a)(1) and (a)(2) of this section, as well as the attendant circumstances. Telephone or voice communications will be used where possible, but must be confirmed as soon as possible with an immediate precedence message, information to the Secretary of State (for actions taken pursuant to paragraphs (a)(2)(i) and (a)(2)(v) of this section, also make the appropriate American Embassy or Consular Office an information addressee). If communication by telephone or voice is not possible, notification will be effected by an immediate precedence message, as described above. The Chief of Naval Operations or Commandant of the Marine Corps will cause the Secretary of the Navy and the Deputy Director for Operations of the National Military Command Center to be notified without delay.

(b) Personnel of the Department of the Navy shall neither directly nor indirectly invite persons to seek asylum or temporary refuge.

[41 FR 18074, Apr. 30, 1976]

Subpart J—Rights and Responsibilities of Persons in the Department of the Navy

§ 700.1115 Control of official records.

No person, without proper authority, shall withdraw official records or correspondence from the files, or destroy them, or withhold them from those persons authorized to have access to them.

§ 700.1116 Disclosure and publication of information.

(a) No person in the Department of the Navy shall convey or disclose by oral or written communication, graphic (including photographic) or other means, any classified information except as provided in the Department of the Navy Information Security Program Regulation. Additionally, no person in the Department of the Navy shall communicate or otherwise deal with foreign entities, even on an unclassified basis, when such would commit the Department of the Navy to disclose classified military information, except as may be required in his official duties and only after coordination with and approval by the release authority stipulated in the Department of the Navy Information Security Program Regulation.

(b) No person in the Department of the Navy shall convey or disclose by oral or written communication, publication, or other means, except as may be required by his official duties, any information concerning the Department of Defense or forces, or any person, thing, plan or measure pertaining thereto, where such information might be of possible assistance to a foreign power; nor shall any person in the Department of the Navy make any public speech or permit publication of any article written by or for him which is prejudicial to the interests of the United States. The regulations concerned with the release of information to the public through any media will be as prescribed by the Secretary of the Navy.

(c) No person in the Department of the Navy shall disclose any information whatever, whether classified or unclassified, or whether obtained from official records or within the knowledge of the relator, which might aid or be of assistance in the prosecution or support of any claim against the United States. The prohibitions prescribed by the first sentence of this paragraph are not applicable to an officer or employee of the United States who is acting in the proper course of, and within the scope of, his official duties, provided that the disclosure of such information is otherwise authorized to be disclosed by statute, Executive order of the President, or departmental regulation.

(d) Any person in the Department of the Navy receiving a request from the public for Department of the Navy records shall be governed by security classification markings, distribution statements on technical documents, and the term "For Official Use Only" which may be used to identify material or records not to be released to the general public. The general regulations concerned with the availability to the public of the Department of the Navy records shall be as prescribed by the Secretary of the Navy.

(e) Persons in the Department of the Navy desiring to submit manuscripts to commercial publishers, or professional, political or international subjects shall comply with regulations promulgated by the Secretary of the Navy.

(f) No person in the naval service on active duty or civilian employee of the Department of the Navy shall act as correspondent of a news service or periodical, or as a television or radio news commentator or analyst, unless assigned to such duty in connection with the public affairs activities of the Department of the Navy, or authorized by the Secretary of the Navy. Except as authorized by the Secretary of the Navy, no person assigned to duty in connection with public affairs activities of the Department of the Navy shall receive any compensation for acting as such correspondent, commentator, or analyst.

[39 FR 7135, Feb. 25, 1974, as amended at 41 FR 18075, Apr. 30, 1976; 45 FR 80279, Dec. 4, 1980]

§ 700.1117 Official records in civil courts.

No person in the Department of the Navy shall produce or release any official record in response to a subpoena duces tecum, motion for discovery, interrogatory or otherwise in a civil suit, or in connection with preliminary investigations by attorneys or others except in accordance with the provisions of the Manual of the Judge Advocate General.

§§ 700.1118—700.1119 [Reserved]

§ 700.1120 Rules for preventing collisions, afloat and in the air.

(a) All persons in the naval service responsible for the operation of naval ships, craft and aircraft shall diligently observe the International Rules for Preventing Collisions at Sea, (commonly called International Rules of the Road) Inland Rules of the Road, domestic and international air traffic regulations, and such other rules and regulations as may be established by the Secretary of Transportation or other competent authority for regulating traffic and preventing collisions on the high seas, in inland waters, or in the air, where such laws, rules and regulations are applicable to naval ships and aircraft. In those situations where such law, rule or regulation is not applicable to naval ships, craft or aircraft they shall be operated with due regard for safety of others.

(b) Any significant infraction of the laws, rules and regulations governing traffic or designed to prevent collisions on the high seas, in inland waters, or in the air, which may be observed by persons in the naval service shall be promptly reported to their superiors, including the Chief of Naval Operations or Commandant of the Marine Corps when appropriate.

(c) Reports need not be made under this article if the facts are otherwise reported in accordance with other directives, including duly authorized safety programs.

§§ 700.1121—700.1132 [Reserved]

§ 700.1133 Use of title for commercial enterprises.

No person in the naval service shall, while on extended naval service, use his grade or rating in connection with a commercial enterprise. "Extended naval service," for the purposes of this article, is defined as active duty, other than active duty for training, under a call or order that does not specify a period of thirty days or less. This article shall not apply to a person who is not on active service, nor shall it apply to authorship of any material for publication, by persons on either active or inactive service, provided that such material is published in accordance with existing regulations.

§§ 700.1134—700.1142 [Reserved]

§ 700.1143 Return of Government property on release from active service.

When a person is released from active service, he shall return all Government property in his possession to his commanding officer or other competent authority.

§ 700.1144 Issue or loan of public property.

(a) Except as prescribed in this article, public property including supplies, shall not be issued, on loan or otherwise, to any state, organization, or private individual except by special authority of Congress.

(b) When so authorized by the senior officer present, a commanding officer may issue such supplies as can be spared to those in distress in the event of a public exigency or calamity, or to vessels in distress, and, when so authorized, he may issue rations and necessities to destitute seamen and airmen of the United States who are received on board. The supply officer making such an issue shall do so only pursuant to an order in writing, shall procure receipts when practicable for the supplies issued, and shall render accounts for such supplies in accordance with the instructions contained in the Naval Supply System Command Manual or the Marine Corps Supply Manual, as appropriate.

(c) Public property, except aircraft, may be loaned by the commandant of a naval district to a state located within the district and maintaining naval militia organizations, for use by a naval militia organization in that state, provided that 95 percent of the

personnel of the last-mentioned organization are attached to or associated with a unit of the naval reserve, and provided that the naval militia organization conforms to the standards prescribed by the Secretary of the Navy for similar organizations of the Naval Reserve. A report of such loans shall be made by the commandant to the interested bureaus, offices or commands of the Navy Department.

§§ 700.1145—700.1149 [Reserved]

§ 700.1150 Alcoholic liquors.

(a) Except as may be authorized by the Secretary of the Navy, the introduction, possession or use of alcoholic liquors for beverage purposes on board any ship, craft, aircraft, or in any vehicle of the Department of the Navy is prohibited. The transportation of alcoholic liquors for personal use ashore is authorized, subject to the discretion of the officer in command or officer in charge, or higher authority, when the liquors are delivered to the custody of the officer in command or officer in charge of the ship, craft, or aircraft in sealed packages, securely packed, properly marked and in compliance with customs laws and regulations, and stored in securely locked compartments, and the transportation can be performed without undue interference with the work or duties of the ship, craft, or aircraft. Whenever alcoholic liquor is brought on board any ship, craft, or aircraft for transportation for personal use ashore, the person who brings it on board shall at that time file with the officer in command or officer in charge of the ship, craft, or aircraft, a statement of the quantity and kind of alcoholic liquor brought on board by him, together with his certification that its importation will be in compliance with customs and internal revenue laws and regulations and applicable State or local laws at the place of debarkation.

(b) The introduction, possession, and use of alcoholic liquors for beverage purposes or for sale is authorized within naval activities and other places ashore under naval jurisdiction, to the extent and in such manner as the Secretary of the Navy may prescribe.

§ 700.1151 Responsibilities concerning marijuana, narcotics, and other controlled substances.

(a) All personnel shall endeavor to prevent and eliminate the unauthorized use of marijuana, narcotics, and other controlled substances within the naval service.

(b) Except for authorized medicinal purposes, the introduction, possession, use, sale, or other transfer of marijuana, narcotic substances or other controlled substances on board any ship, craft, or aircraft of the Department of the Navy or within any naval station or other place under the jurisdiction of the Department of the Navy, or the possession, use, sale, or other transfer of marijuana, narcotic substances or other controlled substances by persons in the naval service, is prohibited.

(c) The term "controlled substance" means: a drug or other substance included in Schedule I, II, III, IV, or V established by section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), as updated and republished under the provisions of that Act.

§§ 700.1152—700.1160 [Reserved]

§ 700.1161 Endorsement of commercial product or process.

Except as necessary during contract administration to determine specification or other compliance, no person in the Department of the Navy, in his official capacity, shall endorse or express an opinion of approval or disapproval of any commercial product or process.

Subpart K—Purpose and Force of Regulations Within the Department of the Navy

§ 700.1201 Purpose and force of United States Navy Regulations.

United States Navy Regulations is the principal regulatory document of the Department of the Navy, endowed with the sanction of law, as to duty, responsibility, authority, distinctions, and relationships of various commands, officials, and individuals. Other regulations, instructions, orders, manuals, or similar publica-

tions, shall not be issued within the Department of the Navy which conflict with, alter or amend any provision of Navy Regulations.

§ 700.1202 Issuances concerning matters over which control is exercised.

Responsible officers and officials of the Department of the Navy may issue, or cause to be issued, orders, instructions, directives, manuals or similar publications concerning matters over which they exercise command, control, or supervision.

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

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AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502, 32 CFR Part 286 (40 FR 8190). Subpart E also issued under 32 CFR Part 296 (40 FR 4911), unless otherwise noted.

SOURCE: 40 FR 12777, Mar. 21, 1975, unless otherwise noted.

Subpart A—Requests for Records

§ 701.1 Purpose.

Subparts A through D of this Part 701 implement the Freedom of Information Act (5 U.S.C. 552) and DoD Directive 5400.7 of February 14, 1975 (32 CFR Part 286; 40 FR 8190), by delineating responsibilities and prescribing policies, procedures, conditions, and criteria applicable to responding to requests of members of the public for copies of Department of the Navy Records, and is published for the guidance of the public.

§ 701.3 Scope and effect.

(a) *Applicability.* Subparts A through D of this Part 701 shall govern responses by Department of the Navy officials and military and civilian personnel to written requests from members of the public for permission to examine, or to be provided with copies of Department of the Navy records. Informal requests, requests of members of the public for information other than records, and inquiries not clearly contemplating the furnishing of records, are not subject to the technical requirements of this subpart, but shall be answered promptly in accordance with other established procedures and practices. See § 701.6. Additionally, the following categories of requests for information or records are specifically excluded from the scope of this instruction:

(1) Requests from the Congress or Members of Congress, which are governed by Secretary of the Navy Instruction 5730.12, and by Section 1-1006.1 of the Armed Services Procurement Regulation (32 CFR 1.1006-1);

(2) Requests from Department of the Navy military or civilian personnel (active, reserve, former, or retired) for information contained in their personnel or medical records, or for copies of documents contained therein, which, unless specifically stating that they are submitted pursuant to this instruction or the Freedom of Information Act, will be presumed to have been submitted pursuant to other regulations or procedures specifically designed to ensure the protection of the privacy of the individuals concerned.

(3) Requests from the General Accounting Office for records in connection with audits, which are governed by Secretary of the Navy Instruction 5741.2D;

(4) Court orders or subpoenas demanding production of records, discovery, or testimony of witnesses, which are governed by the Manual of the Judge Advocate General (JAGINST 5800.7A), chapter XIII (32 CFR Part 720) or

(5) Requests from other Federal agencies, or Federal Government employees whose official duties require or entitle them to have the particular information or records.

(b) *Publication and Public Availability of Special Classes of Records.* The requirements in 5 U.S.C. 552 that certain classes of Department of the Navy regulatory, rule-making, and organizational records be published in the FEDERAL REGISTER for the guidance of the public, and requirements that records having precedential effect concerning the public be currently indexed and held available for public inspection and copying, are implemented in Subpart E.

(c) *Public Affairs Regulations.* This instruction is intended to complement, and not restrict, the conduct of Department of the Navy public affairs, media relations, community relations, or internal relations functions and practices authorized in Secretary of the Navy Instruction 5720.44, Department of the Navy Public Affairs Regulations. Should the latter instruction conflict in any respect with any provisions of this Part 701, however, the provisions of this part shall be controlling.

(d) *U.S. Navy Regulations.* For the purposes of article 1116.3, U.S. Navy Regulations, 1973, [32 CFR 700.1116(c)] the release of a record to a member of the public upon a request granted in accordance with §§ 701.8 or 701.9 shall be deemed to have been done in the discharge of official duties. For the purposes of article 1116.4 [§ 700.1116(d)], the release of a record designated as "For Official Use Only" to a member of the public upon a request granted in accordance with §§ 701.8 or 701.9, shall not be deemed

to have been a release to the "general public."

(e) *Other Directives.* Other directives which, to the extent that they do not conflict with this subpart, serve to supplement it with respect to particular categories of information or records, include:

(1) Bureau of Naval Personnel Instruction 1070.12A and Marine Corps Manual, paragraph 1070 (also, for Headquarters, Marine Corps, HQO P5000.3A, chapter 30)—release of information from the personnel records of members and former members of the Navy and Marine Corps.

(2) Federal Personnel Manual, chapters 293, 294, 335, 339 and 713—release of information from active and inactive civilian personnel records.

(3) Manual of the Medical Department, U.S. Navy, NAVMED P-117, chapter 23, section III—release of information from active and inactive medical records.

(4) Armed Services Procurement Regulation (32 CFR 1.329) and Navy Procurement Directives (32 CFR Part 737)—release of procurement records and information.

§ 701.4 "Record(s)" defined.

(a) As used in subparts A through D, the term "record(s)" is intended to include any books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. "Records" are not limited to permanent or historical documents but include contemporary documents as well.

(b) "Record(s)" described in § 701.4(a)(1) which are stored in computers are not excluded from the provisions of this subpart. See § 701.5(b)(2).

(c) However, the term "record(s)" does not include objects or articles such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, etc., whatever their historical value or value as "evidence." Formulae, designs, drawings, research data, computer programs, technical data packages, etc., are not considered "records" within the Congressional intent of 5 U.S.C. 552, even though maintained in documentation form. Because of development costs, utilization, or value, these items are considered property, not preserved for informational value nor as evidence of agency functions, but as exploitable resources to be utilized in the best interest of all the public. Requests for copies of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of such property. Requests to inspect such material to determine its content for informational purposes shall normally be granted, however, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for certain formulae.

§ 701.5 General provisions.

(a) *Policy.* In accordance with the spirit and intent of 5 U.S.C. 552 and 32 CFR Part 286, the Department of the Navy will make available to the public the maximum information concerning its operations, activities, and administration. Subject to the conditions in Subparts A through D concerning exemptions and the requesters, compliance with prescribed minimum requirements, records requested by the public will be made available promptly, fully, and willingly, as a matter of right.

(b) *Requests for Records.* Upon receipt of written or oral requests to naval activities, all reasonable efforts should be made to advise members of the public on the correct means for securing permission to examine desired records at appropriate times at locations where they are held, or for obtaining copies of such records. Subject to the requesters' compliance with the minimum requirements prescribed in

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§ 701.6(a), the following provisions shall apply, at all activities and all echelons of command, to written requests for examination or copies of records under the cognizance of the Department of the Navy:

(1) *Time limits.* Except in the limited instances where brief time extensions are authorized under § 701.8(b)(2), an official having responsibility for making the initial determination to grant or deny a request for examination or a copy of a record shall transmit that determination in writing to the requester within 10 working days after it is received by that official in form satisfying the minimum requirements. The record shall be made available for examination at the activity, or a copy will be furnished, as applicable, upon or promptly after a determination that it may be released in whole or part. Within the framework of this subpart, and utilizing their existing resources, naval activities are expected to develop internal procedures for ensuring the expeditious handling of requests, the prompt retrieval and review of the requested records, and the timely transmittal of determinations. Where a request is denied, in whole or part, an appeal is to be anticipated, and every effort will be made to facilitate the determination of the appeal within the applicable time limit.

(2) *Identification of records.* Subject to the provisions of subparts A through D, requests shall be honored for records which are "reasonably described." See § 701.6(a)(2). It is expected that naval activities will use their superior knowledge of the contents of their files and expend reasonable efforts to assist the public in identifying the records which contain the particular information which is sought. However, a record must exist at the time of the request, and it is not required that a record be "created" or compiled for the purpose of furnishing information not already provided in existing records. A record that is maintained by computer is normally deemed to exist for this purpose only if retrievable in approximately the form desired without substantial reprogramming.

(3) *Fees.* The fees associated with searching for and duplicating records requested under this subpart shall be determined in accordance with § 701.40. Such fees normally must be paid (or waived) in advance of rendering such search or duplication services, and, normally, the time limit for transmitting a determination on a request will not begin to run until the fee is paid or the requester's entitlement to a waiver is established. An exception exists where the requester promises in writing at the time of the request to pay, upon receipt of a bill therefor, all fees incurred in complying with the request (or pay such fees up to a specified limit) and represents that he will be able to make such payment; provided that, at the time of the request, the requester is not known to be in default of payment of fees incurred in connection with a previous request for records under this subpart. Fees shall be charged only for direct costs of searches and duplication and shall not include indirect costs or costs attributable to reviewing records. See § 701.6.

(4) *Records containing exempt matters*—(i) *Determinations.* A requested record will be deemed "releasable" and shall be released to the public unless it is affirmatively determined both that the record contains matters which are exempt from disclosure under § 701.5(b)(4)(ii) and that a significant and legitimate governmental purpose will be served by withholding it. The determination of whether a significant and legitimate governmental purpose is served by withholding information is within the sole discretion of the Department of the Navy. If exempt matters in a record are "reasonably segregable" from non-exempt portions, the nonexempt portions shall be made available. See § 701.22. In no event shall a determination that a requested record is exempt, that a significant and legitimate governmental purpose would be served by withholding it, or that it has not been requested in accordance with prescribed procedures be influenced by the possibility that its release might suggest administrative error or inefficiency, or might embarrass the Department of the Navy or its military or civilian officials in the performance of their duties.

(ii) *Exemptions.* Even though it might otherwise appear that a significant and legitimate governmental purpose would be served by withholding it, no matter shall be withheld from disclosure to the public unless it is included within one of the exemptions listed in 5 U.S.C. 552(b). These exemptions, which are amplified in subpart B, are limited to:

(A) Matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order. (5 U.S.C. 552(b)(1))

(B) Matters that are related solely to the internal personnel rules and practices of an agency. (5 U.S.C. 552(b)(2))

(C) Matters that are specifically exempted from disclosure by statute. (5 U.S.C. 552(b)(3))

(D) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. (5 U.S.C. 552(b)(4))

(E) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. (5 U.S.C. 552(b)(5))

(F) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (5 U.S.C. 552(b)(6))

(G) Investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would:

(*1*) Interfere with enforcement proceedings;

(*2*) Deprive a person of a right to a fair trial or an impartial adjudication;

(*3*) Constitute an unwarranted invasion of personal privacy;

(*4*) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(*5*) Disclose investigative techniques and procedures, or

(*6*) Endanger the life or physical safety of law enforcement personnel. (5 U.S.C. 552(b)(7))

(H) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. (5 U.S.C. 552(b)(8)) or

(I) Geological and geophysical information and data, including maps, concerning wells. (5 U.S.C. 552(b)(9))

(c) *Identification and Marking "For Official Use Only" (FOUO).* (1) Unless properly classified under Chief of Naval Operations Instruction 5510.1E, Department of the Navy Information Security Program Regulation, a record may be designated as being "For Official Use Only" (FOUO) if at the time of its origination it is considered to contain matters which are included within the exemptions listed in § 701.5(b)(4)(ii) and which must be protected from release to the general public and indiscriminate handling because of significant and legitimate governmental reasons. No other records shall be so designated or marked. The procedures for marking, handling, and safeguarding of "For Official Use Only" materials are set forth in Secretary of the Navy Instruction 5570.2B.

(2) The presence or absence of a "For Official Use Only" marking on a record shall not relieve an official acting on a request for the record from his responsibility for reviewing it and making an independent determination on its releasability in accordance with § 701.5(b)(4)(ii). Such a marking on a record shall not be cited or referred to as a reason for denying a request for its release. The presence of such marking should be regarded as a signal for alerting the reviewing official to the possibility that the record may contain nonreleasable matters.

§ 701.6 Form and addresses for requests for records.

(a) *Minimum Requirements.* To qualify as a equest within the technical requirements of this subpart, a request for copies of, or for permission to examine, Department of the Navy records must, at the minimum.

(1) Be in writing and indicate expressly, or by clear implication, that it is a request under the Freedom of Information Act or this regulation;

(2) Contain a reasonable description of the particular records requested—i.e., a sufficiently accurate and specific description to enable naval personnel to locate and identify the particular records desired with a reasonable amount of effort; and

(3) Contain a check or money order for the anticipated search and duplication fees determined in accordance with § 701.40 (at least a substantially adequate approximation of the actual fees); or a clear statement that the requester will be willing and able to pay all fees or to pay such fees up to a specified limit; or satisfactory evidence establishing that the requester is entitled to waiver of such fees in accordance with § 701.40.

(b) *Recommended Additional Contents.* Though not deemed to be essential requisites for a request under this subpart, it is recommended that the following additional matters be included, as applicable, in a request for records:

(1) A notation on the outside of the envelope that it is a request under the Freedom of Information Act;

(2) If the request does not specifically identify the desired records, an explanation of the purposes for which they are desired might assist naval personnel in identifying the relevant records.

(c) *Addressing Requests.* Section 701.31 is a list of commonly requested types of records and the addresses of the naval activities from which such records normally can be obtained. A request for a record held by a Department of the Navy activity normally will not be deemed to have been received for purposes of the time limits specified in § 701.8(a) until it is received by the appropriate activity listed in § 701.31. Misdirected requests will be handled in accordance with § 701.7(c)(3).

(d) *Treatment of Requests Not Meeting Minimum Requirements.* (1) Requests which do not qualify for treatment within the technical requirements of this subpart because they do not conform to the minimum requirements specified in § 701.6(a) should nevertheless be answered promptly (within ten working days after receipt, if possible) in writing, in a manner calculated to assist the requesters in obtaining the desired records in accordance with the provisions of Subparts A through D. For example, if such a request fails to contain a reasonable description of a desired record, the requester should be offered appropriate assistance in framing a new request in a way which might facilitate identification of the record. If a request fails to contain payment or a promise of payment of anticipated fees, information should be furnished upon which the requester may reasonably estimate the probable range of the fees which may be involved. Telephone contacts will frequently be useful for supplementing the required written communications.

(2) In a case where a request fails to qualify for treatment within the technical requirements of this subpart because of omission to include payment or a promise of payment of the applicable fees, but it is ascertained that the requested record is conveniently available and is releasable in its entirety, the official responsible for responding to the request may, if he determines that it will be in the best interests of the activity to do so, provide a copy of such record in advance of payment or promise of payment of the applicable fees. The application of this provision shall be within the sole and exclusive discretion of the responsible official of the activity concerned and shall not be construed as creating an exception to, or grounds for waiver of, the minimum requirements specified in § 701.6(a).

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8598, Feb. 8, 1980]

§ 701.7 Responsibility and authority for determinations.

(a) *Release Authorities.* Subject to § 701.7(c)(2), commanding officers and heads of all Navy and Marine Corps activities (departmental and field) are authorized to furnish copies of records in their custody, or to make such records available for examination, upon

proper request. Coordination with the official having cognizance of the subject matter of the requested record, or with the originator of the record, is advised where there is a question as to its releasability.

(b) *Denial Authorities.* The following officials (and their principal assistants authorized to act "by direction") are authorized to deny (as well as grant) requests for documents or records, when the information sought relates to matters within their respective areas of responsibility:

(1) For the Navy Department, the Civilian Executive Assistants, the Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Material, the Chief of Naval Personnel, the Chief, Bureau of Medicine and Surgery, and the heads of Navy Department offices and boards. The Judge Advocate General and his Deputy, and the General Counsel and his Deputies are excluded from this grant of authorization, but the Assistant Judge Advocates General and the Assistants to the General Counsel, and the Director, Contract Appeals Division, Office of the General Counsel, are so authorized.

(2) For shore activities, commanders of naval systems commands; commandants of naval districts; the Commanders of the Naval Intelligence Command, Naval Security Group, Naval Telecommunications Command, and Naval Weather Service; the Auditor General of the Navy; the Naval Inspector General; the Chief of Naval Education and Training; the Chief of Naval Reserve; and the Oceanographer of the Navy.

(3) For the Operating Forces, fleet commanders in chief, and the Commander, Military Sealift Command.

(4) Commanders of major Navy and Marine Corps activities designated by the Chief of Naval Operations or the Commandant of the Marine Corps.

(c) *Responsibility for Acting on Requests*—(1) *General rule.* Subject to § 701.7(c)(2), when any Department of the Navy activity receives a request for a copy of, or permission to examine, a record in its custody, that activity is responsible for acting on the request in the time and manner prescribed in this subpart. Section 701.31 is a list of commonly requested types of records and the addresses of the activities which normally have custody of the records of each type. A request for a record will not be deemed to have been received for the purposes of the time limit specified in § 701.8(a) until it is received either by the appropriate official indicated in § 701.31 or [except in cases involving the records specified in § 701.7(c)(2)] by any other Department of the Navy official which has the record in its custody.

(2) *Exceptions.* The following exceptions exist with regard to the general rule in § 701.7(c)(1) that any naval activity receiving a request for a record in its custody is responsible for acting on the request.

(i) *Classified records.* If records requested from the appropriate naval activity indicated in § 701.31 include classified records, and if the head of that activity is not the original classifier or does not have classification jurisdiction over the subject matter in accordance with Chief of Naval Operations Instruction 5510.1E, he shall promptly readdress and forward the request to the official originating the classification, if a denial authority under § 701.7(b), or else to a denial authority having cognizance of the classified matters in the record, for review and determination as to the classified records, and the requester shall be so notified. If the naval activity which received the request is the proper addressee as indicated in § 701.31, the time limit specified in § 701.8(a) commences when the request is received by that activity. If the naval activity which initially receives the request is not the proper addressee as indicated in § 701.31, the request will be treated as a misdirected request in accordance with § 701.7(c)(3), and the time limit will commence when the request is received by the original classifier or the denial authority having cognizance of the classified records.

(ii) *NIS reports.* A request for a Naval Investigative Service report shall promptly be readdressed and forwarded directly to the Director, Naval Investigative Service, for review and determination, and the requester shall be so notified. Direct liaison is encouraged. The time limit specified in

§ 701.8(a) will commence when the request is received by the Director, Naval Investigative Service.

(iii) *Technical documents controlled by distribution statements.* A request for a technical document to which "Distribution Statement B" is affixed shall promptly be readdressed and forwarded directly to the "controlling DoD office" in accordance with Chief of Naval Material Instruction 5200.29, for review and determination, and the requester shall be so notified. Direct liaison is encouraged. The time limit specified in § 701.8(b) [1] will commence when the request is received by the controlling office.

(iv) *Records originated by other agencies.* A request for a record originated by an agency outside the Department of the Navy [except a technical document within the purview of Chief of Naval Material Instruction 5200.29; see § 701.7(c)(2)(iii)] shall promptly be readdressed and forwarded to such agency, and the requester shall be so notified. Guidance, when necessary, may be obtained from the Chief of Naval Operations (OP-09B16) or the Commandant of the Marine Corps (Code PA), as appropriate. Direct liaison is authorized.

(3) *Misdirected requests.* A request for a copy of, or permission to examine, a Department of the Navy record received by an activity which is not the appropriate naval activity indicated in § 701.31 and does not have the record in its custody, shall promptly be readdressed and forwarded directly to the appropriate naval activity. The requester shall be notified of the readdressal. Direct liaison between the original recipient and the correct addressee is encouraged for ensuring the expeditious handling of the request.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

§ 701.8 Procedures for processing requests.

(a) *Time Limits for Determinations—Normal requirement.* Except in an unusual instance where a brief time extension is authorized under § 701.8(b) it is required that the determination on each request for examination or copies of records be sent to the requester within ten working days (i.e., excluding Saturdays, Sundays, and legal public holidays) after the request is received by the activity having responsibility for acting on it.

(b) *Extensions of time limits.* Only those officials authorized in § 701.7(b) to deny requests for records are authorized to extend the time limits for responding to such requests. Should any other official require an extension of time in which to complete processing of a request on which he is responsible for acting, he shall request (by formal or informal communication) authorization for such extension from the appropriate denial authority designated in § 701.7(b). Such extension may be authorized only in accordance with the following conditions:

(1) An extension may be authorized only if necessitated by one or more of the following unusual circumstances provided for in 5 U.S.C. 552:

(i) The need to search for and collect records that are located in whole or part at places separate from the office processing the request;

(ii) The need to search for, collect, and examine a substantial number of records in response to a request; or

(iii) The need to consult with another naval activity or another agency which has a substantial subject-matter interest in the determination of the request.

(2) Such extension may be authorized only for that additional period of time which will be reasonably necessary for the proper processing of the request, but in no event may the period of extension exceed ten working days.

(3) If there appears to be a substantial possibility that the request might ultimately be denied, in whole or part, the Judge Advocate General (Code 14L) or the General Counsel, as appropriate [see § 701.9(c)], shall be consulted by expeditious means prior to authorizing such extension.

(1 CFR 18.14, and Part 21, Subpart B)

[1] Paragraph (b) of § 701.8 was redesignated as paragraph (a) at 43 FR 17355, Apr. 24, 1978.

[40 FR 12777, Mar. 21, 1975, as amended at 43 FR 17355, Apr. 24, 1978; 45 FR 8599, Feb. 8, 1980]

§ 701.9 Appeals from denials of requests for records.

(a) *Addressees for Appeals.* Appeals to the Secretary of the Navy under the provisions of 5 U.S.C. 552 and this subpart are to be addressed—

(1) To:

The Judge Advocate General (Code 14L)
Department of the Navy
Washington, D.C. 20370

if concerning records which pertain to any matters not excepted in § 701.9(2)(c)(i);

(2) Or to:

The General Counsel
Department of the Navy
Washington, D.C. 20360,

if concerning records which pertain to the matter specified in § 701.9(c)(2)(ii).

(b) *Time and Form for Filing Appeals.* To be effective for purposes of the provisions of 5 U.S.C. 552 and this subpart, an appeal from an initial denial, in whole or in part, of a request for records, or a refusal to waive fees, must be in writing and be received by the appropriate official specified in § 701.9(a) not more than 120 days following the date of transmittal of the notification of the initial denial. Additionally, such appeal must clearly state that it is an appeal from a denial of a request made under the "Freedom of Information Act" or this subpart, and must either fully describe the circumstances of the request and initial denial or have attached a copy of the letter denying the request.

(c) *Responsibility and Authority*—(1) *Delegation of authority.* The Judge Advocate General and the General Counsel are authorized to determine appeals made to the Secretary of the Navy on denials of requests for copies of such Department of the Navy records, or portions thereof, or refusals to waive fees, as pertain to the matters which are within their respective areas of cognizance for legal services. This shall include the authority to release or withhold records, or portions thereof, waive fees, and to perform such other acts as may be required of the Secretary of the Navy in connection with the appeals made under 5 U.S.C. 552.

(2) *Respective areas of cognizance.* As delineated in Secretary of the Navy Instructions 5430.25c and 5430.27, the respective areas of cognizance of the Judge Advocate General and the General Counsel for providing legal services for the Department of the Navy are:

(i) *Judge Advocate General.* All matters except the business and commercial law matters assigned to the cognizance of the General Counsel, which are specified in the following:

(ii) *General Counsel.* The business and commercial law aspects of matters relating to (A) the acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the naval petroleum reserves; (B) operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract; (C) the Office of the Comptroller of the Navy; (D) procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Armed Services Procurement Regulations and the Navy Procurement Directives and deviations therefrom; and (E) industrial security and claims and litigation concerning the foregoing.

(d) *Procedures for Processing Appeals*—(1) *Administrative controls.* The principles in SECNAVINST 5720.42B subparagraph 8a are also applicable, where appropriate, to the handling and processing of appeals.

(2) *Time limits for determining appeals*—(i) *Normal requirement.* Except in an instance where a brief time extension is authorized under the § 701.9(d)(2)(ii), it is required that the final determination on an appeal to the Secretary of the Navy under 5 U.S.C. 552 and this subpart be sent to the appellant within 20 working days after the appeal is received in the Office of the Judge Advocate General

or the Office of the General Counsel, as prescribed in § 701.9(a).

(ii) *Extensions of time limits.* If necessitated by one or more of the reasons specified in § 701.8(b)(1), the Judge Advocate General or the General Counsel, as appropriate, is authorized to extend the time limit for that additional period of time which will be reasonably necessary for the proper processing of the appeal. Provided, that such period of extension, when added to any period of extension used in the initial processing of the request, may not exceed a total of ten working days.

(3) *Action upon receipt.* Upon receipt of an appeal, the Judge Advocate General or the General Counsel shall inform the Chief of Naval Operations (OP-09B16) or the Commandant of the Marine Corps (Code PA), as appropriate, who shall expeditiously forward the case file with such comments and recommendations as he or other interested officials may deem appropriate. Immediate coordination shall be established with the Director of Naval Intelligence (OP-009D) in an appeal involving a classified record. All naval activities are enjoined to provide rapid and responsible assistance, as required, for facilitating correct and timely determinations of appeals. Direct liaison with appropriate officials within the Department of the Navy and other interested Federal agencies is authorized at the discretion of the determining official, and he shall be responsible for coordinating with appropriate officials of the Departments of Defense and Justice in such manner as may be prescribed by directives of the Secretary of Defense. The Secretary of the Navy or the appropriate Civilian Executive Assistants shall be consulted and kept advised of cases having unusual implications.

(4) *Notification of final determination.* Upon resolving the issues involved, the determining official shall give the appellant an appropriate written notification of the final determination made on the appeal. If such determination has the effect of granting a request, in whole or part, the determining official shall cause the requester's right to seek judicial reportions thereof, to be made promptly available. If the final determination has the effect of denying a request, in whole or part, the notification shall contain the names and titles of each person responsible for such denial, an advisement of the requester's right to seek judicial review, and the following additional matters, as applicable:

(i) An explanation of the exemption(s) under § 701.5(b)(4)(ii) upon which the determination is based and the significant and legitimate governmental purpose served by withholding the requested record;

(ii) If the determination is based, in whole or part, upon a security classification—

(A) A statement that, based on such declassification review as could reasonably be accomplished within the time limit for responding to the appeal, it is determined that the record meets specified criteria and rationale of Chief of Naval Operations Instruction 5510.1E; and

(B) An advisement of the requester's optional right to seek declassification of the record by the Department of the Navy Classification Review Committee, with a further right to appeal to the Interdepartmental Classification Review Committee established pursuant to Executive Order 11652, 8 March 1972, in lieu of immediate judicial review;

(iii) Such other matters as may be prescribed by directives of the Secretary of Defense.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

Subpart B—Guidelines on Matters Which Are Exempt From Public Disclosure

§ 701.21 General rule.

Matters contained in records may be withheld from public disclosure if they come within one or more of the specific exemptions listed in § 701.5(b)(4)(ii). However, even exempt matters in a record are releasable and should be made available to a member of the public, unless, in the judgment of the officer or official responsible for making the determination--

(a) Release of the matters would be inconsistent with a statutory requirement or Chief of Naval Operations Instruction 5510.1E; or

(b) Some other significant and legitimate governmental purpose will be served by invoking the exemption(s) and withholding the matters.

§ 701.22 "Reasonably segregable" matters.

If a requested record contains both releasable and nonreleasable matters, the releasable portions should be made available if they are reasonably segregable from the nonreleasable matters in the record. Releasable matters are "reasonably segregable" if they would provide the requester with meaningful and undistorted information after the nonreleasable matters are excised and it can reasonably be assumed that a skillful and knowledgeable person could not reconstruct the nonreleasable matters. Reasonable segregation may be based on a system of designating nonreleasable portions at the time the record is originated, although the continuing validity of the original determination must be reevaluated in response to a request for the record. The paragraph designations of classified information under Chief of Naval Operations Instruction 5510.1E is an example of such a system for segregating releasable and nonreleasable matters.

§ 701.23 Judicial review.

In determining whether a record is exempt from disclosure under §§ 701.5(b)(4)(ii) and 701.24, it should be kept in mind that, in the event of judicial review of a denial of a request for a record, a court is empowered to examine the record in its entirety in private to determine whether it is, in fact, exempt.

§ 701.24 Specific exemptions.

The following types of matters may be withheld from public disclosure unless otherwise prescribed by law:

(a) *"Exemption 1" Matters.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive order and implementing regulations, such as Chief of Naval Operations Instruction 5510.1E. If a requested record is classified in accordance with that directive the record must be reviewed for the basis of the security classification. The following general rules are applicable:

(1) The request must be referred, with information and recommendations, to an official who is authorized under § 701.7(b) to deny requests and who has cognizance of the classified matters in the record, if the basis of the classification is:

(i) An approved security classification guide promulgated in accordance with Chief of Naval Operations Instruction 5510.1E;

(ii) A source document originated by another naval activity or government agency;

(iii) An original classification determination for which there is written justification for classification, and the justification remains valid; or

(iv) Not readily identifiable, but classification is believed to be warranted on the basis of classification criteria contained in Chief of Naval Operations Instruction 5510.1E.

(2) If the original classifier of a record within his classification jurisdiction receives a request for the record and, upon review, can see no basis for continued classification, the record should be declassified and reviewed to determine whether any other exemptions listed in § 701.5(b)(4)(ii) are applicable and, if so, whether a significant and legitimate governmental purpose would be served by withholding it.

(b) *"Exemption 2" Matters.* Those containing rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or to the internal practices of the Departments of Defense or the Navy, if their release to the public would substantially hinder the effective performance of a significant function of the Departments of Defense or the Navy.

(1) Operating rules, guidelines and manuals for investigators, inspectors, auditors, or examiners, and certain schedules or methods of operation which would reveal:

(i) Negotiating and bargaining techniques.

(ii) Bargaining limitations and positions.

(iii) Inspection schedules and methods.

(iv) Audit schedules and methods.

(2) Personnel and other administrative matters such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance to duty, advancement, or promotion.

(c) *"Exemption 3" Matters.* Those containing information which statutes authorize or require be withheld from the public. Such authorization or requirement may be found in the terms of the statute itself or in Executive orders or regulations authorized by, or in implementation of, a statute. Examples include:

(1) 18 U.S.C. 1905—trade, technical, and financial information provided in confidence by businesses.

(2) Pub. L. 86-36 (50 U.S.C. 402 note)—National Security Agency information.

(3) 35 U.S.C. 181-188—records containing information relating to inventions which are the subject of patent applications on which Patent Secrecy Orders have been issued.

(4) 5 U.S.C. 552a (Pub. L. 93-579)—Privacy Act of 1974, effective 27 September 1975.

(5) 42 U.S.C. 2161—"Restricted Data"

(6) 18 U.S.C. 798—Communications information.

(7) 50 U.S.C. 402(d) (3) and (g)—Intelligence sources and methods.

(d) *"Exemption 4" Matters.* Those containing trade secrets of commercial or financial information which a component receives with the understanding that it will be retained on a privileged or confidential basis in accordance with the customary handling of such records, particularly when release would adversely affect the competitive position of the source of the information. Such records include those which contain:

(1) Commercial and financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions and discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, where such statements are received in confidence from the individual and retained in confidence because they cover trade secrets or commercial or financial information normally considered confidential or privileged, or because they are essential to an effective inspection, investigation, or audit.

(e) *"Exemption 5" Matters.* Except as provided in paragraphs (e) (2) through (5) of this section, internal communications within and among Federal agencies and components.

(1) Examples include:

(i) Staff papers containing staff advice, opinions, or suggestions.

(ii) Information received or generated by a component preliminary to a decision or action, including draft versions of documents, where premature disclosure would interfere with the authorized purpose for which the records were created.

(iii) Advice, suggestions, or reports prepared on behalf of the Department of Defense by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed by a component to obtain advice and recommendations, or by individual consultants.

(iv) Those portions of component evaluations of contractors and their products which contain recommendations or advice by Government employees about the contractor or product.

(v) Advance information on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions when such information would provide undue or unfair competitive advantage to private personal interests.

(vi) Records which are exchanged among agency personnel or within and

among components or agencies preparing for anticipated legal proceedings before any Federal, State, or military court, or before any regulatory body.

(vii) Reports of inspections, audits, investigations, or surveys which pertain to safety, security, or the internal management, administration, or operation of the Departments of Defense or the Navy or their components.

(2) If any such intra-agency or inter-agency record, or reasonably segregable portion of such record, would routinely be made available through the discovery process (i.e., the legal process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing) in the course of litigation with the agency, then such record, or reasonably segregable portions of it, should be deemed releasable. If, however, the information would only be made available through the discovery process by special order of the court based on the particular needs of a litigant balanced against the interests of the agency in maintaining its confidentiality, then the record may be considered to be non-releasable.

(3) Purely factual material in such an inter-agency or intra-agency record is routinely made available through discovery and (if reasonably segregable and containing no other exempt matters rendering it nonreleasable) should therefore be released.

(4) A direction or order from a superior to a subordinate, though contained in internal communication, is generally releasable if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters that would compromise the decision-making process.

(5) An internal communication concerning an event or decision which has subsequently been made a matter of public record should normally be considered to be releasable unless it is determined that, because of special circumstances, release would prejudice the current decision-making process.

(f) *"Exemption 6" Matters.* Information in personnel and medical files, as well as information in similar files that, if disclosed to a member of the public, would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of files similar to personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment and the eligibility of individuals, civilian, military or industrial, for security clearances.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration should be given to the stated or assumed purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened.

(3) When the only basis for withholding information is protection of the personal privacy of an individual who is the subject of the record, information should not be withheld from him or from his designated legal representative. A clearly unwarranted invasion of the privacy of others discussed in that record may, however, constitute a basis for deleting reasonably segregable portions of the record even when providing it to the subject of the record. With regard to the release of a medical record to a patient who may be adversely affected by knowledge of its contents, the principles of good medical practice should be followed.

(4) On and after 27 September 1975, an individual's personnel, medical, or similar files may be withheld from him or from his designated legal representative only in accordance with regulations implementing the Privacy Act of 1974 (5 U.S.C. 552a).

(g) *"Exemption 7" Matters.* Law enforcement records

(1) Those compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive orders, or regulations validly adopted pursuant to law, but only to the extent that their release would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source;

(v) Disclose confidential information furnished only from confidential source obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(vi) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to insure their effectiveness; or

(vii) Endanger the life or physical safety of law enforcement personnel.

(2) Examples include:

(i) Statements of witnesses and other material based on the information developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals suspended from contracting with the Department of Defense or being investigated for alleged irregularities when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence in the course of:

(A) A criminal investigation by a criminal law enforcement agency or office within a component; or

(B) A lawful national security intelligence investigation conducted by an authorized agency or office for the purpose of obtaining affirmative or counter intelligence information, or background investigation information needed to determine suitability for employment or eligibility for access to classified information.

(3) The right of individual litigants to investigative records currently available by law is not diminished.

(4) On and after September 27, 1975, when the subject of an investigative record is the requester of the record, it may be withheld only in accordance with regulations implementing the Privacy Act of 1974 (5 U.S.C. 552a).

(h) *"Exemption 8" Matters.* Those contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulations or supervision of financial institutions.

(i) *"Exemption 9" Matters.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records Are Available for Public Inspection

§ 701.31 Addressees for requests for Department of the Navy records.

Members of the public should address requests to the commanding officer or head of the activity where the record is located. When the official having custody of the record is not known, the request should be addressed to the originating official, or the official having primary responsibility for the subject matter involved. The cognizant official to whom requests for the most commonly requested types of records should be addressed are as indicated below.

Type of Record	Addressee
Civilian Personnel Records (or requests for information involving the personnel records of civilians). When requests involves civilians:	
Presently employed by the Department of the Navy, or separated from Federal employment less than 30 days.	The head of the activity where the person is employed, marked for the attention of the civilian personnel officer.
Formerly employed by the Department of the Navy, or separated from Federal employment for more than 30 days.	Manager, National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louic, MO 63118.
Chaplain Corps and religious affairs matters	Chief of Chaplains, Navy Department, Washington, D.C. 20370.
Contractual or procurement type records and related matters:	
Navy procurement directives, and armed services procurement regulation (ASPR); and related indexes.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Type of Record	Addressee
All others	Contracting officer, or head of the procurement (purchasing) activity, when known. When one of these is not known, submit the request to the Chief of Naval Material (MAT 05). Washington, D.C. 20350; except if a Marine Corps matter, submit to the Deputy Chief for Installation and Logistics, U.S. Marine Corps, Washington, D.C. 20380.
Court-Martial Records:	
Involving bad-conduct discharge. For request involving records of trial by general court-martial, and by special court-martial involving an officer accused or involving a sentence which, as approved by the general court-martial convening authority, extends to a bad conduct discharge.	Judge Advocate General, Navy Department, Washington, D.C. 20370.
Not involving a bad-conduct discharge. For requests involving records of trial of other special and summary court-martial other than those described above (after final actions and a retention period at a shore activity for 2 years and at a fleet activity for 3 months).	Manager, National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
Inspector General inspection, investigation, and related survey matters:	
Records prepared by the Naval Inspector General	Naval Inspector General, Navy Department, Washington, D.C. 20370.
Records prepared by inspector general of other Navy commanders	The commander for whom the inspector general records were prepared.
Instructions (unclassified) of general applicability issued under the Department of the Navy's directives issuance system; and quarterly subject index thereof (NAVPUBNOTE 5215).	Director, Navy Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19111.
Internal audit matters	The Auditor General of the Navy, Navy Department, Washington, D.C. 20350.
Legal matter records (other than those relating to court-martial records covered above):	
General counsel legal matters. Requests relating to (1) the acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof, excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the naval petroleum reserves; (2) operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract; (3) the Office of the Comptroller of the Navy; (4) procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the armed services procurement regulation and Navy procurement directives and deviations therefrom, and (5) industrial security and claims and litigation concerning the foregoing.	The head of the activity which the request concerns, marked for the attention of the Office of Counsel, otherwise to: General Counsel, Navy Department, Washington, D.C. 20360.
Judge Advocate General legal matters. Requests for records involving all legal matters other than the above general counsel matters.	Judge Advocate General, Navy Department, Washington, D.C. 20370.
Manpower management, civilian, matters. When the request relates to:	
Local activity matters	The head of the activity which the request concerns, marked for the attention of the civilian personnel officer.
General matters relating to Marine Corps, only, manpower management	Commandant of the Marine Corps (Code M), Washington, D.C. 20380.
All others, including any relating to overall Department of the Navy manpower management matters.	Director of Civilian Manpower Management, Navy Department, Washington, D.C. 20390.
Marine Corps records. When other specific addressee is not known, and when request is for Marine Corps directives, publications, and manuals of general Marine Corps applicability.	Commandant of the Marine Corps, Navy Department, Washington, D.C. 20380.
Medical records. When requests involve the medical records of military personnel, dependents of military personnel, and other civilians:	
For Navy and Marine Corps officer and enlisted personnel and their dependents (other than those covered below).	The medical treatment activity where the record is maintained, if known. (This generally is the activity where the patient is being treated, or recently was treated, since records are forwarded to the receiving activity when a patient is transferred.)
For former Navy and Marine Corps personnel separated prior to 1913 and their dependents.	Chief, Navy and Old Army Branch, Military Archives Division, National Archives and Records Service, GSA, Washington, D.C. 20408.
Officer personnel who have been separated from the service (discharged, retired, or deceased) for more than 4 months, reservists not on active duty, and nonparticipating reservists.	Manager, National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
Enlisted personnel on extended active duty who have been separated (discharged, retired, or deceased) for less than 4 months, and temporary disability retired enlisted personnel.	Commandant of the Marine Corps (Code M), Navy Department, Washington, D.C. 20380.
Enlisted personnel who have been separated (discharged, retired, or deceased) for more than 4 months, transferred to the fleet reserve, and inactive enlisted reservists not affiliated with a reserve unit.	Manager, National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

Type of Record	Addressee
For Marine Corps officer and enlisted personnel separated prior to 1895	Chief, Navy and Old Army Branch, Military Archives Division, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.
Military Specifications, Standards, and Handbooks, and Department of Defense Index of Specifications and Standards (DOD–ISS):	
Specifications, standards, and handbooks	Director, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19111.
DOD Index	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
Naval Investigative Service Reports and Related Matters. (This covers any request for information from reports prepared by the Naval Investigative Service, even though copies may be held by other activities. Requests addressed elsewhere will be promptly forwarded to this proper address.).	Director, Naval Investigative Service, 2461 Eisenhower Avenue, Alexandria, VA 22331.
Non-current Department of the Navy Records (preserved as permanent documentation, particularly when records predate 1946).	Archivist of the United States, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.
For former Navy and Marine Corps personnel (other than those separated prior to 1913 and covered above) and their dependents.	Manager, National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
For Civilian employees	The medical activity or facility where the person is being treated or was recently treated and where the record is maintained, if known. If this is not known and the record has been retired (generally, if it is 2 years or more since date of last treatment), address request to the Manager, National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.
When the location of the record is not known	Chief, Bureau of Medicine and Surgery (Code 334), Navy Department, Washington, D.C. 20372.
Military personnel records, general:	
Concerning Navy personnel matters	Chief of Naval Personnel, Navy Department, Washington, D.C. 20370.
Concerning Marine Corps personnel	Commandant of the Marine Corps (Code M), Navy Department, Washington, D.C. 20380.
Military personnel records, individual:	
(Requests should be addressed according to the status of the individual to whom the request relates, as indicated below.)	
For Navy (USN and USNR) officer personnel:	
Active duty officers, inactive officers, and temporary disability retired officers	Chief of Naval Personnel (Pers 37), Bureau of Naval Personnel, Washington, D.C. 20370.
Officers who have been separated from the service (discharged, retired, or deceased) for less than 1 year.	Chief of Naval Personnel (Pers 37), Bureau of Naval Personnel, Washington, D.C. 20370.
Officers who have been separated from the service (discharged, retired, or deceased) for more than 1 year, and inactive reservists.	Manager, National Personnel Record Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
Officers separated prior to 1902	Chief, Navy and Old Army Branch, Military Archives Division, National Archives and Records Service, GSA, Washington, D.C. 20408.
Enlisted personnel on active duty, participating inactive duty, and temporary disability retired.	Chief of Naval Personnel (Pers 38), Bureau of Naval Personnel, Washington, D.C. 20370.
Enlisted personnel (active, inactive, and temporary disability retired) who have separated (discharged, retired, or deceased) for less than 4 months.	Chief of Naval Personnel (Pers 38), Bureau of Naval Personnel, Washington, D.C. 20370.
Nonparticipating inactive enlisted personnel who have more than 18 months of their military obligation to serve.	Chief of Naval Personnel (Pers 38), Bureau of Naval Personnel, Washington, D.C. 20370.
Nonparticipating inactive enlisted personnel, when request involves the current enlistment	Commanding Officer, Naval Reserve Manpower Center, Bainbridge, MD 21905.
Enlisted personnel transferred to the fleet reserve, nonparticipating inactive personnel who have less than 18 months of their military obligation to serve, and enlisted personnel who have been separated (discharged, retired, or deceased) for more than 4 months.	Manager, National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
Enlisted personnel separated (discharged, retired, or deceased) prior to 1885.	Chief, Navy and Old Army Branch, Military Archives Division, National Archives and Records Service, GSA, Washington, D.C. 20408.
For Marine Corps officer and enlisted personnel:	
Officer personnel (USMC and USMCR) on extended duty who have been separated (discharged, retired, or deceased) for less than 4 months, and temporary disability retired officers..	Commandant of the Marine Corps (Code M), Washington, D.C. 20380.
Public Affairs and News Media Matters:	
Local interest, only, matters	The head of the local activity concerned, marked for the attention of the public information officer.

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Type of Record	Addressee
Marine Corps, only, matters	Commandant of the Marine Corps (PA), Washington, D.C. 20380.
All others	Chief of Information, Navy Department, Washington, D.C. 20350.
Publication and indexes (when specific addressee is not known).	Director, Naval Publications and Printing Service Office, Naval District Washington, Washington Navy Yard, Building 157, 2d Floor, Washington, D.C. 20374.
Research and Development Records (See also Technical Reports):	
When the custodian of the record is known	The head of the activity having custody of the record.
Basic research records, when other definite address is not known	Chief of Naval Research, Navy Department, 800 N Quincy St., Arlington, VA 22217.
Other records, when definite address is not known	Director of Navy Laboratories, Navy Department, Washington, D.C. 20390.
Supply Catalogs:	
Navy and Federal supply catalogs, master cross reference indexes, and related cataloging publications, (except as noted immediately below).	Federal Clearinghouse, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 20402.
Cataloging handbooks (such as H2–1, and –2, H3, et cetera) and Federal manuals for supply cataloging (such as M1–1, –2, and –3, et cetera).	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
Technical reports (when definite Department of the Navy addressee is not known), and indexes of technical reports available.	Defense Documentation Center, Cameron Station, Alexandria, VA 22314.
Technical, engineering, and supply type documents and data. (Includes records relating to equipments, components, systems, drawings, et cetera, except see above for addressees for military specifications, standards, and catalogs.) For those concerning:	
Aeronautical materials	Commander, Naval Air Systems Command, Department of the Navy, Washington, D.C. 20361.
Electronic materials	Commander, Naval Electronic Systems Command, Department of the Navy, Washington, D.C. 20360.
Facilities (design, construction, and maintenance; utilities; housing; real estate matters; et cetera).	Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, D.C. 22332.
Ships and ordnance materials	Commander, Naval Air Systems Command, Department of the Navy, Washington, D.C. 20360.
Supply matters:	
Navy	Commander, Naval Supply Systems Command, Department of the Navy, Washington, D.C. 20376.
Marine Corps	Commandant of the Marine Corps (Code L), Washington, D.C. 20380.
Other requests. When not otherwise provided for in this enclosure, and for general information regarding the location of, or proper addressee for, Department of the Navy records.	Chief of Naval Operations (Op–09B16), Navy Department, Washington, D.C. 20350.

§ 701.32 Locations at which Department of the Navy records are available for public inspection.

Name of Facility and Location	Type of Material
In the Department (seat of government):	
Navy Department Library: Second floor of Building 220, at the Washington Navy Yard, U.S. Naval Station, 9th and M Streets SE., Washington, D.C. 20374. The facility is open from 0800 to 1630 (8 a.m. to 4:30 p.m.), Mondays through Fridays, except holidays.	An index system by subject matter to materials held. For example: (1) Department of the Navy directives issuance system consolidated subject index of unclassified instructions (an index of administrative unclassified instructions issued by Washington headquarters organizations and distributed to addressees outside the originating office); and the Marine Corps directives system quarterly checklist of directives distributed outside Headquarters, Marine Corps. These indexes assist in identifying instructions issued on any desired subject.

Name of Facility and Location	Type of Material
	(2) An index to the armed services procurement regulation and to Navy procurement directives.
	(3) Any other indexes prepared pursuant to this instruction and a master list of available indexes.
Law Library of the Office of the Judge Advocate General: Room 2527 of the Navy Arlington Annex (Federal Office Building, No. 2), Southgate Road and Columbia Pike, Arlington, VA 20370.	Published and unpublished decisions of Boards of Review and Military Courts of Review created under the Uniform Code of Military Justice. (Published decisions are available also at naval bases, as indicated below.)
Technical Library of the Navy Publications and Printing Service Office: Second floor of Building 157, Washington Navy Yard, U.S. Naval Station, 9th and M Streets, Washington, D.C. 20374.	Certain technical manuals, and indexes thereto, as made available under clearance procedures prescribed by sponsoring naval systems commands or as specified in contract documents.
Headquarters, Marine Corps: Room 1135 of the Navy Arlington Annex (Federal Office Building No. 2), Southgate Road and Columbia Pike, Arlington, VA 20380.	Marine Corps indexes, directives (orders and bulletins), and publications of general Marine Corps applicability.
In the field (shore activities)	To the extent the material described above is received by Navy and Marine Corps field activities ashore, for the regular conduct of their business, it will be made available locally to members of the public, for inspection and copying, under procedures prescribed by this instruction, during regular working hours.
All Navy and Marine Corps shore activities: (Consult the area telephone directory for address of local Navy and Marine Corps activities.)	Current files of Department of the Navy directives of general applicability, and related indexes; also, directives of less than general applicability pertinent to their operations, and related indexes.
Navy publications and printing service offices (NPPSO): Located in Building 157-1 at the Washington Navy Yard, U.S. Naval Station, Washington, D.C. 20374; and in building 4, section D, at the Fourth Naval District, 700 Robbins Avenue, Philadelphia, PA 19111.	Technical manuals and data at field activities will be available as indicated in procurement documents. In some instances they will be made available under clearance procedures prescribed by the sponsoring naval systems command.
Naval bases and Marine Corps bases: (Consult the area telephone directory under U.S. Government for location of any nearby base.)	Published decisions of the Boards of Review and Military Courts of Review created under the Uniform Code of Military Justice can be found in "Courts-Martial Reports" maintained by these bases.

Subpart D—Schedules of Fees

§ 701.40 Uniform search and duplication fees for Department of Defense components.

(a) ***Duplication*—(1)** ***Publications, Forms and Reports.*** **Shelf stock of printed or microfiche medium (requestors may be furnished more than one copy of a publication or form if it does not deplete stock levels below projected planned usage).**

Minimum fee, per request plus	$2.00
Forms, per copy	.05
Publications, per printed page	.01
Microfiche, per fiche	.06
Reports, per printed page	.05

(Examples: Cost of 20 forms $3; cost of a printed publication with 100 pages, $3; cost of a microfiche publication consisting of 10 fiche, $2.60.)

(2) ***Office copy reproduction (when shelf stock is not available).***

Minimum charge up to six reproduced pages	$2.00
Minimum charge, first fiche	5.00
Each additional page	.05
Each additional fiche	.10

(3) ***Other Issuances.***

Minimum charge up to six pages	$2.00
Each additional page	.05

(b) ***Search.***

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Clerical search, per hour	$6.50
Minimum charge	3.50
Professional search (includes computer programmer time), per hour	13.00
Minimum charge	10.00

Computer service charges will be based on actual computer configuration used and be based on direct costs only of the central processing unit plus input/output devices plus memory capacity.

(c) *Exceptions.* (1) In general, charges may be waived when:

(i) The recipient of the benefits is engaged in a nonprofit activity designed for public safety, health or welfare;

(ii) Payment of the full costs or fee by a state, local government or nonprofit group would not be in the interest of the program;

(iii) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(2) A refusal to waive charges by the official responsible for the initial decision on the request for the record may be appealed to the head of the DoD Component or his designee for purposes of final approval.

(d) *Collections.* (1) Normally, collection of charges and fees will be made in advance of rendering the service. In some instances, it may be more practical to collect charges and fees at the time of conveying the service or property to the recipient, but only in those instances where the request specifically states that whatever cost involved will be acceptable or acceptable up to a specified limit that covers anticipated costs. Absent such an agreement to pay required anticipated costs, the time for responding to a request begins to run upon receipt of payment.

(2) Collection of scheduled fees and charges will normally be deposited to Miscellaneous Receipts of the Treasury.

(3) Search fees are assessable even when no records responsive to the request, or no records not exempt from disclosure are found, provided the requestor is advised of the requirement at the time the estimated charges are presented to the requestor for approval.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

Subpart E—Indexing, Public Inspection, and Federal Register Publication of Department of the Navy Directives and Other Documents Affecting the Public

SOURCE: 40 FR 36325, Aug. 20, 1975, unless otherwise noted.

§ 701.51 Purpose.

This subpart implements 5 U.S.C. 552 (a) (1) and (2) and provisions of Department of Defense Directive 5400.7, February 14, 1975, (32 CFR Part 286, 40 FR 8190), Department of Defense Directive 5400.9, December 23, 1974, (32 CFR Part 296, 40 FR 4911), and Regulations of the Administrative Committee of the FEDERAL REGISTER (1 CFR chs. I and II) by delineating responsibilities and prescribing requirements, policies, criteria, and procedures applicable to:

(a) Publishing the following Department of the Navy documents in the FEDERAL REGISTER:

(1) Certain classes of regulatory, organizational, policy, substantive, and procedural documents required to be so published for the guidance of the public;

(2) Certain classes of proposed regulatory documents required to be so published for public comment prior to issuance; and

(3) Certain public notices required by laws or regulations to be so published;

(b) Making available, for public inspection and copying, certain other classes of documents having precedential effect for decisions concerning members of the public;

(c) Maintaining current indexes of documents having precedential effect for decisions concerning members of the public, and publishing such indexes or making them available by other means; and

(d) Receiving and considering petitions of members of the public for the

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issuance, revision, or cancellation of regulatory documents of some classes.

§ 701.52 Scope and applicability.

This subpart prescribes actions to be executed by, or at the direction of, components of the Navy Department [as defined in § 700.104(c) of this chapter] and specified headquarters activities for apprising members of the public of the existence and terms of Department of the Navy regulations, policies, and substantive and procedural rules and decisions which may affect them, and for enabling members of the public to participate in Department of the Navy rulemaking processes in matters of substantial and direct concern to the public. The fact that a document may be published or indexed and made available for public inspection and copying under this subpart does not affect the possible requirement under Subpart A for producing it for examination, or furnishing a copy, in response to a request made under that subpart.

§ 701.53 [Reserved]

§ 701.54 Policy.

In accordance with the spirit and intent of 5 U.S.C. 552, it is the right of the public to have the maximum information concerning the organization and functions of the Department of the Navy and the policies and substantive and procedural rules by which those functions are performed in relation to the public. In accordance with Department of Defense Directive 5400.9 (32 CFR Part 296, 40 FR 4911), moreover, the public is encouraged to participate to the maximum practicable extent in Department of the Navy rulemaking which has a substantial and direct impact upon the public.

§ 701.55 [Reserved]

§ 701.56 Publication of adopted regulatory *documents* for the guidance of the public.

(a) *Classes of documents to be published.* Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from requirements for release or disclosure to the public [see § 701.5(b)(4)], the following classes of Department of the Navy documents are required to be published on a current basis in the FEDERAL REGISTER for the guidance of the public:

(1) *Naval organization and points of contact.* Descriptions of the central and field organization of the Department of the Navy and the established places at which, the members or employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) *Methods and procedures for business with the public.* Statements of the general course and methods by which Department of the Navy functions affecting members of the public are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) *Procedural rules and forms.* Rules of procedure for functions affecting members of the public, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations required to be submitted to such rules of procedures; and

(4) *Substantive rules and policies.* Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department of the Navy. Such rules are commonly contained in directives, manuals, and memorandums.

(i) *"General applicability" defined.* The definition prescribed in 1 CFR 1.1 is pertinent to the classes of documents contemplated in § 701.56(a)(4):

(ii) *Internal personnel rules and internal practices.* In addition to the other exemptions which are listed in 5 U.S.C. 552(b) and § 701.5(b)(4) and are applicable to the publication requirements of this section, particular attention is directed to the exemption pertaining to internal personnel rules and internal practices, which is discussed in § 701.24(b).

(iii) *Local regulations.* As a normal rule, it is deemed unnecessary to publish in the FEDERAL REGISTER a regulation which is essentially local in its scope or application, such as a direc-

tive issued by a base commander in the implementation of his responsibility and authority under Subpart G of Part 700 of this title for guarding the security of the installation or controlling the access and conduct of visitors or tradesmen. However, such publication of a local directive may be authorized where extraordinary justification exists, as determined by the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the concurrence of the Judge Advocate General.

(iv) *Incorporation by reference.* With the approval of the Director of the FEDERAL REGISTER given in the limited instances authorized in 32 CFR 296.6 and 1 CFR Part 51, the requirement for publication in the FEDERAL REGISTER may be satisfied by reference in the FEDERAL REGISTER to other publications containing the information which must otherwise be published in the FEDERAL REGISTER.

(b) *Public inspection.* When feasible, Department of the Navy and Department of Defense documents which are published in the FEDERAL REGISTER for guidance of the public should be made available for inspection and copying, along with any available indexes of such documents, in the same facilities provided for public inspection and copying of the documents contemplated in § 701.59.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 36325, Aug. 20, 1975, as amended at 43 FR 17355, Apr. 24, 1978; 45 FR 8599, Feb. 8, 1980]

§ 701.57 Prepublication of proposed regulations for public comment.

(a) *Discussion.* The requirements of this section are not imposed by statute, but are the implementation of the policies and procedures which were created administratively in 32 CFR Part 296. In effect, the pertinent provisions of 32 CFR 296.1 and 296.5 establish, within the Department of Defense and its components, procedures that are analogous to the public rulemaking procedures applicable to some functions of other Federal agencies under 5 U.S.C. 553. While the administrative policy of encouraging the maximum practicable public participation in Department of the Navy rulemaking shall be diligently followed, determinations by the Department of the Navy as to whether a proposed regulatory requirement originated by it comes within the purview of this section and the corresponding provisions of 32 CFR 296.5, and as to whether inviting public comment is warranted, shall be conclusive and final.

(b) *Classes of documents affected.* Each proposed regulation or other document of a class described in § 701.56(a) (or a proposed revision of an adopted document of any of those classes) which would "originate" within the Department of the Navy a requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public, must be evaluated to determine whether inviting public comment prior to issuance is warranted. Documents that merely implement regulations previously issued by higher naval authorities or by the Department of Defense will not be deemed to "originate" requirements within the purview of this section. If a proposed document is within the purview of this section, publication for inviting public comment will be deemed to be warranted unless, upon evaluation, it is affirmatively determined both that a significant and legitimate interest of the Department of the Navy or the public will be served by omitting such publication for public comment, and that the document is subject to one or more of the following exceptions:

(1) It pertains to a military or foreign affairs function of the United States which has been determined under the criteria of an executive order or statute to require a security classification in the interests of national defense or foreign policy;

(2) It relates to naval management, naval military or civilian personnel, or public contracts (e.g., Navy Procurement Directives), including nonappropriated fund contracts;

(3) It involves interpretative rules, general statements of policy, or rules

of agency organization, procedure, or practice; or

(4) It is determined with regard to the document, for good cause, that inviting public comment is impracticable, unnecessary, or contrary to the public interest.

(c) *Procedures*—(1) *Normal case.* Unless the official having cognizance of a proposed regulatory document determines under the criteria of § 701.57(b) that inviting public comment is not warranted, he shall cause it to be published in the FEDERAL REGISTER with an invitation for the public to submit comments in the form of written data, views, or arguments during a specified period of not less than 30 days following the date of publication. An opportunity for oral presentation normally will not be provided, but may be provided at the sole discretion of the official having cognizance of the proposed directive if he deems it to be in the best interest of the Department of the Navy or the public to do so. After careful consideration of all relevant matters presented within the period specified for public comment, the proposed document may be issued in final form. After issuance, the adopted document, and a preamble explaining the relationship of the adopted document to the proposed document and the nature and effect of public comments, shall be published in the FEDERAL REGISTER for the guidance of the public.

(2) *Where public comment is not warranted.* The official having cognizance of a proposed document within the purview of this section shall, if he determines that inviting public comment concerning the document is not warranted under the criteria of § 701.57(b), incorporate that determination, and the basis therefor, in the document when it is issued or submitted to a higher authority for issuance. After issuance, such document shall be published in the FEDERAL REGISTER for the guidance of the public, if required under § 701.56(a).

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

§ 701.58 Petitions for issuance, revision, or cancellation of regulations affecting the public.

In accordance with the provisions of 32 CFR 296.7, the Department of the Navy shall accord any interested person the right to petition, in writing, for the issuance, revision, or cancellation of a regulatory document that originates, or would originate, for the Department of the Navy, a policy, requirement, or procedure which is, or would be, within the purview of § 701.57. The official having cognizance of the particular regulatory document involved, or having cognizance of the subject matter of a proposed document, shall give full and prompt consideration to any such petition. Such official may, at his absolute discretion, grant the petitioner an opportunity to appear, at his own expense, for the purpose of supporting his petition, if this is deemed to be compatible with orderly conduct of public business. The petitioner shall be advised in writing of the disposition, and the reasons for the disposition, of any petition within the purview of this section.

§ 701.59 Availability, publication, and indexing of other documents affecting the public.

(a) *Discussion.* In addition to the requirements of 5 U.S.C. 552(a)(1) for publishing some classes of regulatory documents in the FEDERAL REGISTER for the guidance of the public, there are requirements in 5 U.S.C. 552(a)(2) for facilitating public identification and inspection of other classes of documents which have precedential effect with regard to Department of the Navy decisions affecting members of the public. The documents that are subject to these requirements must be kept readily available for public inspection and copying at designated places, unless they are promptly published and copies are offered for sale. Additionally, such documents of these classes as have been, or will be issued after July 4, 1967, are required to be indexed on a current basis, and these indexes, or supplements thereto, must be published at least quarterly in accordance with the provisions of this section. In determining whether a par-

ticular document is subject to the requirements of this section, consideration should be given to the statutory purposes and legal effect of the provisions.

(1) *Statutory purposes.* In general, the purposes of the requirements are to provide members of the public with essential information for enabling them to deal effectively and knowledgeably with Federal agencies in matters affecting them; to apprise members of the public of the existence and contents of documents which have potential legal consequences as precedents in administrative determinations affecting them; and to permit public examination of the basis of administrative actions affecting the public.

(2) *Legal effect.* If a document is required to be indexed and made available under this section, it may not be used or asserted as a precedent against a member of the public unless it was so indexed and made available, or unless the person against whom it is asserted had actual and timely notice of its contents.

(b) *Classes of documents affected.* (1) Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from requirements for release or disclosure to the public [see § 701.5(b)(4) and Subpart B], the following classes of Department of the Navy documents are included in the requirements of this section:

(i) *Final adjudicative opinions and orders*—opinions (including concurring and dissenting opinions) and orders which are issued as part of the final disposition of adjudication proceedings (as defined in 5 U.S.C. 551), which may have precedential effect in the disposition of other cases affecting members of the public;

(ii) *Policy statements and interpretations*—statements of policy and interpretations of less than general applicability (i.e., applicable only to specific cases, organizations, or persons), which are not required to be published in the FEDERAL REGISTER, but which may have precedential effect in the disposition of other cases affecting members of the public;

(iii) *Manuals and instructions*—administrative staff manuals, directives, and instructions to staff, or portions thereof, which establish Department of the Navy policy or interpretations of policy that serve as a basis for determining the rights of members of the public with regard to Department of the Navy functions. In general, manuals and instructions relating only to internal-management aspects of property or fiscal accounting, personnel administration, and most other "proprietary" functions of the department are not within the scope of this provision. This provision also does not apply to instructions for employees on the methods, techniques, or tactics to be used in performing their duties; for example:

(A) Instructions or manuals issued for audit and inspection purposes;

(B) Those which prescribe operational tactics; standards of performance; criteria for defense, prosecution, or settlement of cases; or negotiating or bargaining techniques, limitations, or positions; and

(C) Operations and maintenance manuals and technical information concerning munitions, equipment, and systems.

(2) In determining whether a document has precedential effect, the primary test is whether it is intended as guidance to be followed either in decisions or evaluations by the issuing authority's subordinates, or by the issuing authority itself in the adjudication or determination of future cases involving similar facts or issues. The kinds of orders or opinions which clearly would have precedential effect are those that are intended to operate both as final dispositions of the questions involved in the individual cases presented, and as rules of decisions to be followed by the issuing authority or its subordinates in future cases involving similar questions. By contrast, many adjudicative orders and opinions issued within the Department of the Navy operate only as case-by-case applications of policies or interpretations established in provisions of manuals or directives and are not themselves used, cited, or relied on as rules of decision in future cases. In these instances, the underlying manual or directive provisions obviously would have precedential effect, but the orders and opinions themselves would not have. A recom-

mendation by an official who is not himself authorized to adjudicate, or to issue a binding statement of policy or interpretation in a particular matter would not have precedential effect, though an order, opinion, statement of policy, or interpretation issued by an authorized official pursuant to such recommendation might have that effect.

(c) *Deletion of identifying details.* (1) Although the exemptions described in § 701.5(b)(4) and Subpart B are applicable to documents which are required to be indexed and made available for public inspection and copying under this section, there is no general requirement that any segregable portions of partially exempt documents be so indexed and made available for public inspection and copying. As a general rule, a record may therefore be held exempt in its entirety from the requirements of this section if it is determined that it contains any exempt matter and that a significant and legitimate governmental purpose will be served by withholding such exempt matter. However, an exception to this general rule does exist, in effect, with regard to a record which would be exempt only because it contains information which, if disclosed, would result in a clearly unwarranted invasion of privacy.

(2) Where necessary to prevent a clearly unwarranted invasion of a person's privacy, identifying details should be deleted from a record which is required to be indexed and made available for public inspection and copying under this section. In every such case, the justification for the deletion must be fully stated in writing in a manner which avoids creating inferences that could be injurious to the persons whose privacy is involved. Usual reasons for deletion of identifying details include protection of privacy in a person's business affairs, medical matters, or private family matters: humanitarian considerations; and avoidance of embarrassment to a person in a matter not involving possible misconduct or improper, erroneous, or inefficient performance of duties on his part.

(d) *Publication of indexes*—(1) *Form of indexes.* Each index should be arranged topically or by descriptive words, so that members of the public may be able to locate the pertinent documents by subject, rather than by case name or by a numbering system.

(2) *Time of publication.* Each component having cognizance of records required under this section to be indexed shall compile and maintain an index of such records on a continually current basis. Each such index shall initially be published, by one of the methods authorized in § 701.59(d)(3) not later than 1 May 1975. An updated version of each such index, or a current supplement thereto, shall be published by an authorized method at least quarterly thereafter.

(3) *Methods of publication.* The methods authorized for publication of the indexes contemplated in this section are:

(i) Publication in the FEDERAL REGISTER;

(ii) Commercial publication, provided that such commercial publication is readily available to members of the public, or will be made available upon request and payment of costs (if this method is utilized, information on the cost of copies and the address from which they may be obtained shall be published in the FEDERAL REGISTER); or

(iii) Furnishing internally-reproduced copies upon request, at cost not to exceed the direct cost of duplication in accordance with Subpart D provided that it is determined, by an order published in the FEDERAL REGISTER, that the publication of the index by methods § 701.59(d)(3) (i) or (ii) would be unnecessary or impracticable. Such order shall state the cost of copies and the address from which they may be obtained. The Chief of Naval Operations (Op-09B1) is authorized to issue such an order in a proper case.

(4) *Public inspection of indexes.* In addition to publication by one of the foregoing methods, each index will be made available for public inspection and copying in accordance with § 701.59(e), at the location(s) at which Department of the Navy records are available for public inspection.

(e) *Where records may be inspected.* Locations and times at which Depart-

ment of the Navy records, and indexes thereof, are available for public inspection and copying are shown in § 701.32.

(f) *Cost.* Fees for copying services, if any, furnished at locations which Department of the Navy records are available for public inspection shall be determined in accordance with Subpart D.

(g) *Records of Navy Court of Military Review.* The Navy Court of Military Review is deemed to be a "court of the United States" within the meaning of 5 U.S.C. 551 and is therefore excluded from the requirements of 5 U.S.C. 552. Nevertheless, unpublished decisions of the Navy Court of Military Review, although not indexed, are available for public inspection at the location at which Department of the Navy records are available for public inspection.

Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

AUTHORITY: Pub. L. 93-579, 5 U.S.C. 552a.

SOURCE: 41 FR 50662, Nov. 17, 1976, unless otherwise noted.

§ 701.100 Purpose.

This subpart implements the Privacy Act of 1974 (5 U.S.C. 552a) and Department of Defense Directive 5400.11, Personal Privacy and Rights of Individuals Regarding Their Personal Records (DOD Dir. 5400.11) by delineating and prescribing policies, conditions, and procedures for:

(a) Notifying an individual in response to his request if a Department of the Navy system of records named by the individual contains a record pertaining to him.

(b) Verifying the identity of an individual who requests his record, or information pertaining to him, before the record or information is made available.

(c) Granting access to an individual upon that individual's request for his record or for information pertaining to him.

(d) Reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, and for an appeal of an initial adverse determination.

(e) Collection, safeguarding, maintenance, public notice, use, and dissemination of personal information.

(f) Disclosing personal information, and for exempting systems of records from the requirements of 5 U.S.C. 552a.

(g) Establishing rules of conduct for the guidance of Department of the Navy personnel, who will be subject to criminal penalties for non-compliance with the act.

§ 701.101 Scope and effect.

(a) *Applicability.* This subpart applies throughout the Department of the Navy, and to any contractor maintaining a system of records to accomplish a Department of the Navy purpose. Its provisions govern the collection, maintenance, use, and dissemination of personal information, and all requests from individuals who seek information on, access to, copies of, or amendment of records pertaining to themselves under the provisions of 5 U.S.C. 552a. Additionally, all requests received from individuals for copies or examination of records pertaining to themselves, and which are located in a system of records, as defined in § 701.105, will be processed in accordance with this subpart, even though the individuals specify that the requests are made under 5 U.S.C. 552 (Freedom of Information Act), SECNAVINST 5720.42B (32 CFR Part 701, Subparts A-D), or other authority. This subpart does not apply to:

(1) Requests from individuals for access to records pertaining to themselves, but which are not included in a system of records, as defined in § 701.105. these requests will be processed in accordance with 32 CFR Part 701, Subparts A-D. Subsequent requests for amendment of such records, however, will normally be processed in accordance with this subpart.

(2) Requests for records pertaining to other individuals, where such individuals' consent is not provided. Such third party requests are governed by 32 CFR Part 701, Subparts A-D.

(3) Requests by the General Accounting Office for information or records pertaining to individuals, except with respect to the requirement for disclosure accountings as provided in paragraph (c) of § 701.107. Action on such requests is governed by SECNAVINST 5741.2E.

(b) *Other directives.* Should any existing directive dealing with the disclosure of individual personal records conflict with this subpart, the provisions of this subpart shall take precedence.

§ 701.104 Policy, responsibilities and authority.

(a) *Policy and general requirements.* (1) Subject to the conditions and directions in this subpart, it is the policy of the Department of the Navy to ensure that all personnel at all echelons of command or authority within the Department comply fully with the purposes and requirements of 5 U.S.C. 552a for preserving the privacy of information concerning individuals in departmental records. Stated generally, these purposes and requirements are:

(i) To permit individuals to know what records pertaining to them are collected, maintained, used, or disseminated in the Department, to have access to and have copies made of all or any portions of such records, and to obtain amendment of such records, when a discrepancy is noted;

(ii) To permit individuals to prevent records pertaining to them obtained by the Department for a particular purpose from being used or made available for another purpose without their consent;

(iii) To require the Department to collect, maintain, use, or disseminate records of identifiable personal information only for necessary and lawful purposes, and in a manner which ensures that the information is current and accurate for the intended uses;

(iv) To ensure that adequate safeguards are provided to prevent misuse of personal information in records; and

(v) To ensure that requests of individuals for notification, access, or amendments concerning their records are acted on as promptly as feasible even though such requests may be minor in nature.

(2) In furtherance of the above policy, the Department of the Navy will maintain in its records only such information about an individual as is reasonably necessary to accomplish a purpose or mission required by statute or executive order of the President. In assessing need, consideration will be given to alternatives, such as: use of information not individually identifiable; use of sampling; selective collection of certain data for certain individuals, only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(3) No system of records, as defined in § 701.105(d) shall be maintained within the Department of the Navy unless it has been described or included in a records system notice published in the FEDERAL REGISTER.

(4) The Department of the Navy will not maintain any records describing how an individual exercises rights guaranteed by the first amendment, including religious and political beliefs, freedom of speech and press, and the right of assembly and to petition, unless they are:

(i) Expressly authorized by statute;

(ii) Authorized by the individual about whom the record is maintained;

(iii) Within the scope of an authorized law enforcement activity; or

(iv) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation for information which the individual is willing to have in his record concerning religious preference, particularly that required in emergency situations.

(5) Records used by the Department of the Navy in making determinations about an individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in any determination concerning him.

(b) *Responsibilities.* (1) Each addressee is responsible for implementing and executing the purposes and requirements of 5 U.S.C. 552a within his organization, in accordance with the provisions of this subpart.

(2) The Chief of Naval Operations (Op-09B) is responsible for administering and supervising the execution of 5 U.S.C. 552a and this subpart within the Department of the Navy. Additionally, the Chief of Naval Operations (Op-09B1) is designated as the principal Privacy Act coordinator for the Department of the Navy.

(3) The Commandant of the Marine Corps is responsible for administering and supervising the execution of 5 U.S.C. 552a and this subpart within the Marine Corps.

(c) *Denial authority.* Only the following officials (and their respective deputies, principal assistants, or designees) are authorized to deny requests for notification, access, and amendment made under this subpart, when the records relate to matters within their respective areas of command, area coordination, technical, or administrative responsibility, as appropriate:

(1) In the Navy Department, the Civilian Executive Assistants, the Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Material, the Chief of Naval Personnel, the Chief, Bureau of Medicine and Surgery, the heads of Department of the Navy Staff Offices, Boards, and Councils, the Auditor General of the Navy, the Naval Inspector General, and the Assistant Judge Advocate General (Civil Law).

(2) In the Shore Establishment, Commanders of the Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Chiefs of Naval Education and Training, Naval Air Training, and Naval Technical Training; the President, Naval War College; the Superintendent, Naval Postgraduate School; the Superintendent, the U.S. Naval Academy; the Chief of Naval Reserve; the Oceanographer of the Navy; and Commandants of Naval Districts.

(3) In the Operating Forces, CINCLANT, CINCPAC, Fleet Commanders in Chief, Force Commanders, Type Commanders, and the Commander, Military Sealift Command.

(4) Commanders of major Navy and Marine Corps activities designated by the Chief of Naval Operations or the Commandant of the Marine Corps.

(d) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), as the Secretary's designee, shall act upon requests for administrative review of initial denials of requests for amendment of records of fitness reports and performance evaluations of military personnel.

(2) The Judge Advocate General, as the Secretary's designee, shall act upon requests for administrative review of initial denials of requests for notification, access, or amendment of records, other than as indicated in paragraph (d)(1) of this section and other than initial denials of requests for notification, access, or amendment of records from civilian Official Personnel Folders or records contained on any other Civil Service Commission forms.

(e) *Law enforcement activity requests for records from non-DOD agencies.* The authority to request records from a civil or criminal law enforcement agency outside of DOD, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel. These officials may further delegate this authority to deputies, assistants, and other subordinates who exercise authority over an office or division.

[41 FR 50662, Nov. 17, 1976, as amended at 46 FR 60445, Dec. 10, 1981]

§ 701.105 Definitions.

For the purposes of this subpart, the following meanings apply:

(a) *Individual.* A citizen of the United States, or an alien lawfully admitted for permanent residence; or an enlistee in the United States naval service, including a minor. Additionally, the legal guardian of an individual or a parent of a minor has the same rights as the individual, and may act on behalf of the individual concerned under this subpart. Members of the

naval service, once properly accepted, are not minors for purposes of this subpart. The use of the term "individual" does not, however, vest rights in the representatives of decedents to act on behalf of the decedent under this subpart, nor does the term embrace individuals acting in an entrepreneurial capacity (e.g., sole proprietorships and partnerships).

(b) *Maintain.* When used in the context of records on individuals, includes collect, file or store, preserve, retrieve, update or change, use, or disseminate.

(c) *Record.* Any item, collection, or grouping of information about an individual that is maintained by or for the Department of the Navy or by any element of the Navy Department, operating forces, or shore establishment, including, but not limited to, his education, financial transactions, medical history, qualifications, service data, and criminal or employment history, and which contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) *System of records.* A group of records under the control of the Department of the Navy or of any element of the Navy Department, operating forces, or shore establishment, from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) *System manager.* That official who has overall responsibility for records within a particular system. System managers are indicated in the published record system notices. If more than one official is indicated as a system manager, initial contact should be established at the appropriate level (e.g., for local records, contact should be made at the local level).

(f) *Routine use.* When used with respect to the disclosure of a record, the use of a record in compliance with the section of the published record system notice specifying "routine uses," provided such use is compatible with the purpose for which the record was collected. Normally this term is used in connection with interagency transfers of records, rather than transfers within the Department of Defense and the Department of the Navy.

(g) *Disclosure.* The conveyance of any information from a record by any means of communication to any other person or entity.

§ 701.106 Notification, access, and amendment procedures.

(a) *General*—(1) *Summary of requirements.* (i) "Notification" procedures are provided under subsection (e)(4) of 5 U.S.C. 552a to enable an individual to ascertain from the appropriate system manager whether or not a particular system of records contains information pertaining to him. If the system does contain such a record, the individual may request "access" to the record, pursuant to subsection (d)(1) of 5 U.S.C. 552a, to ascertain the contents. "Amendment" procedures are provided under subsections (d) (2) and (3) of 5 U.S.C. 552a, to enable the individual to seek correction or deletion of information about himself in the record which he considers to be erroneous. If a request for "amendment" is denied after a final determination, the individual may file a "statement of dispute," to be noted in the pertinent records and to be shown in connection with disclosures of such records. Individuals have a statutory right to obtain administrative review of denials of requests for amendment, and, by this subpart, are accorded the right to obtain similar review of denials of requests for notification and access.

(ii) The provisions of this paragraph apply to requests by individuals, or their authorized representatives, for records pertaining to themselves that are contained in systems of records, even though the requests specify that they are made pursuant to the Freedom of Information Act or other authority. This subpart does not, however, require that an individual be given notification or access to a record that is not retrieved by name or other individual identifier. Requests for amendment of records—whether or not contained in a system of records—will normally be processed in accordance with this instruction, unless:

(A) They are routine requests for administrative corrections not specifying that they are made under this subpart or 5 U.S.C. 552a, or

(B) They are requests addressed to the Board for Correction of Naval Records, which is governed by other authority.

(2) *System "rules."* System managers are responsible for ensuring that, for each system of records maintained, a record system notice is published in the FEDERAL REGISTER, stating the procedures by which an individual may be notified whether the system contains records pertaining to him. Additionally, system managers are responsible for establishing, and making available to individuals upon request, rules applicable to requests for access or amendment of records within each system. Such rules must conform to the requirements of this subpart and § 701.117. In addition, they should contain the following:

(i) A statement of custodial officials other than the system manager, if any, authorized to grant requests for notification or access;

(ii) The minimum formal requirements for requests, including applicable requirements for requests to be reduced to writing; and, in the case of a request to provide the requester's records directly to an authorized representative who is other than the parent of a minor, or other legal guardian—a recently signed authorization specifying the records to be released and the recipient of the records (notarized authorizations may be required if the sensitivity of the information in the records warrants);

(iii) The information which should be provided by the individual to assist in identifying relevant systems of records and the individual identifiers (e.g., full name, social security number, etc.) needed to locate records in the particular system; and

(iv) The requirements for verifying the requester's identity, to which the following policies apply:

(A) Prior to being given notification or access to personal information, an individual is generally required to provide reasonable verification of his identity. No verification of identity, however, shall be required of an individual seeking notification or access to records which are otherwise available to any member of the public under 32 CFR Part 701, Subparts A-D.

(B) In the case of an individual who seeks notification, access, or amendment in person, verification of identity will normally be made from those documents that an individual is likely to have readily available, such as an employee or military identification card, driver's license, or medical card.

(C) When notification, access, or amendment is requested by mail, verification of identity may be obtained by requiring the individual to provide certain minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know. If the sensitivity of the information in the record warrants, a signed and notarized statement of identity may be required.

(D) When a record has already been identified, an individual shall not be denied notification or access solely for refusing to disclose his social security number.

(3) *Responsibilities for action of initial requests.* (i) Subject to the provisions of this paragraph and the applicable system manager's rules, requests for notification and access may be granted by officals having custody of the records, even if they are not system managers or denial authorities. Requests for amendment may be granted by the cognizant system manager. Denials of initial requests for notification, access, or amendment of records under this instruction, however, may be made only by those officials designated as denial authorities under paragraph (c) of § 701.104.

(ii) Copies of investigatory records that are compiled by an investigative organization, but are in the temporary custody of another organization, which is holding the record for disciplinary, administrative, judicial, investigative, or other purposes, are the records of the originating investigative organization. Upon completion of the official action, the investigative reports are required to be destroyed or returned, in accordance with the instructions of the originating investigative agency. Individuals seeking no-

tification or access, or making other requests under this instruction concerning such records, shall be directed to the originating investigative organization. For example, a request for notification or access to a Naval Investigative Service report in the temporary custody of another activity should be forwarded directly to the Director, Naval Investigative Service.

(4) *"Blanket" requests not honored.* Requests seeking notification and/or access concerning all systems of records within the Department of the Navy, or a component thereof, shall not be honored. Individuals making such requests shall be notified that:

(i) Requests for notification and/or access must be directed to the appropriate system manager for the particular record system, as indicated in the current FEDERAL REGISTER record system notice (a citation should be provided), and

(ii) Requests must either designate the particular system of records to be searched, or provide sufficient information for the system manager to ascertain the appropriate system. Individuals should also be provided with any other information needed for obtaining consideration of their requests.

(5) *Criteria for determinations.* (i) As further explained in § 701.111, portions of designated records systems (indicated in Subpart G of this part) are exempt, in certain circumstances, from the requirement to provide notification, access, and/or amendment. Only denial authorities (and the designated review authority) may exercise an exemption and deny a request, and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose served by denying the request. A request for notification may be denied only when an applicable exemption has been exercised by a denial or review authority. A request for access may be denied by a denial or review authority, in whole or part, on the basis of the exercise of an applicable exemption or for the reasons set forth in § 701.106(a)(5) (ii) or (iii).

(ii) Where a record has been compiled in reasonable anticipation of a civil action or proceeding, a denial authority (or the designated review authority) may deny an individual's request for access to that record pursuant to subsection (d)(5) of 5 U.S.C. 552a, provided that there is specifically determined to be a significant and legitimate governmental purpose to be served by denying the request. Consultation with the Office of the Judge Advocate General, Office of General Counsel, or other originator, as appropriate, is required prior to granting or denying access to attorney-advice material. This includes, but is not limited to, legal opinions.

(iii) Where a denial authority, or the designated review authority, determines that the grant of access to the entire contents of a record to the requesting individual would result in a clearly unwarranted invasion of the personal privacy of another individual mentioned in the same record, and such other individual has not furnished his written consent for the record to be disclosed to the requester, the portion of the record that pertain solely to such other individual shall be deleted from a copy of the record. The requesting individual shall then be granted access to a copy of the remaining portions of the record.

(iv) As indicated in § 701.105(a), where a record pertains to an individual who is a minor, the minor's parent or legal guardian is normally entitled to obtain notification concerning, and access to, the minor's record, pursuant to the provisions of this paragraph. When, however, an applicable law or regulation prohibits notification to, or access by, a parent or legal guardian with respect to a particular record, or portions of a record, pertaining to a minor, the provisions of the governing law or regulation and § 701.107, shall govern disclosures of the existence or contents of such records to the minor's parent or legal guardian (Members of the naval service, once properly accepted, are not minors for the purposes of this subpart.)

(v) Subject to the provisions of this paragraph, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been de-

termined that granting access to medical information could have an adverse effect upon the individual to whom it pertains, the individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access.

(vi) Criteria for determinations on requests for amendment of records are set forth in § 701.106(d)(1).

(6) *Time requirements for making acknowledgements and determinations.* (i) A request for notification, access, or amendment of a record shall be acknowledged in writing within 10 working days (Saturdays, Sundays, and legal holidays excluded) or receipt by the proper office. The acknowledgement shall clearly identify the request and advise the individual when he may expect to be advised of action taken on the request. No separate acklnowledgement of receipt is necessary if a request for notification or access can be acted upon, and the individual advised of such action, within the 10-working-day period. If a request for amendment is presented in person, written acknowledgement may be provided at the time the request is presented.

(ii) Determinations and required action on initial requests for notification, access, or amendment of records shall be completed, if reasonably possible, within 30 working days of receipt by the cognizant office.

(b) *Notification procedures.* (1) *Action upon receipt of request.* Subject to the provisions of this paragraph, upon receipt of an individual's initial request for notification, the system manager or the other appropriate custodial official shall acknowledge the request as required by § 701.106 (a)(6)(i) and take one of the following actions:

(i) If consideration cannot be given to the request, because—

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified, or the individual has not furnished the information needed to locate a record within the system; or

(C) The request is erroneously addressed to an official having no responsibility for the record or system of records in question—

inform the individual of the correct means, or additional information needed, for obtaining consideration of his request for notification;

(ii) Notify the individual, in writing, whether the system of records contains a record pertaining to him (a notification that a system of records contains no records pertaining to the individual shall not be deemed a denial of a request for notification or access);

(iii) If it is determined that notification should be denied under an available exemption and the official is not a denial authority, forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(iv) If the official is a denial authority, take the appropriate action prescribed in § 701.106(b)(2).

(2) *Action by denial authority.* (i) If the denial authority determines that no exemption is available or that an available exemption should not be exercised, he shall provide the requested notification, or direct the system manager or appropriate custodial authority to do so.

(ii) If the denial authority determines that an exemption is applicable and that denial of the notification would serve a significant and legitimate governmental purpose (e,g., avoid interfering with an on-going law enforcement investigation), he shall promptly send the requesting individual an original and one copy of a letter stating that no records from the system of records specified in the request are available to the individual under the Privacy Act. The letter shall also inform the individual that he may request further administrative review of the matter within 120 days, by letter to the:

Judge Advocate General (Code 14L), Department of the Navy, Washington, DC 20370.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy and a statement of the individual's reasons for requesting the review.

(iii) A copy of the letter denying notification shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M), as appropriate. These officials shall maintain copies of all denial letters in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(3) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for notification, the Judge Advocate General shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. He is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination. Within 30 working days of receipt of the request for review, whenever practicable, the Judge Advocate General shall inform the requesting individual, in writing, of the final detemination and the action thereon. If the final determination is to grant notification, the Judge Advocate General may either provide the notification or direct the system manager to do so. If the final determination is to deny notification, the individual shall be informed that it has been determined upon review that there are no records in the specified system of records that are available to him under the Privacy Act.

(c) *Access procedures.* (1) *Fees.* When a copy of a record is furnished to an individual in response to a request for access, he will normally be charged duplication fees determined in accordance with § 701.40, unless such fees are waived. If the individual requests that his record be made available for review in person and copying is the only means by which the record can be shown to him (e.g., when a copy must be made in order to delete information pertaining to another individual in the record), a duplication fee shall not be charged. Search fees are not assessable under the Privacy Act. Civil Service Commission Regulation 297.115 will be used to determine the fees to be charged for copying records from CSC Government-wide systems of records.

(2) *Action upon receipt of request.* Subject to the provisions of this paragraph, upon receipt of an individual's initial request for access, the system manager or other appropriate custodial official shall acknowledge the request as required by § 701.106(a)(6)(i), and take one of the following actions:

(i) If consideration cannot be given to the request because—

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified or the individual has not furnished the information needed to locate a record within a system; or

(C) The request is erroneously addressed to an official not having responsibility for granting access to the record or system of records in question—

inform the individual of the correct means, or additional information needed, for obtaining consideration of his request for access;

(ii) If it is determined that the individual should be granted access to the entire record requested, the official shall inform the individual, in writing, that access is granted, and shall either:

(A) Inform the individual that he may review the record at a specified place and at specified times, that he may be accompanied by a person of his own choosing to review the record (in which event he may be asked to furnish written authorization for the record to be discussed in the accompanying person's presence), and that he may further obtain a copy of the record upon agreement to pay a duplication fee; or

(B) Furnish a copy of the record, if the individual requested that a copy to be sent and agreed in advance to pay duplication fees determined in accordance with § 701.40, unless such fees are waived.

(iii) If it is necessary to deny the individual access to all or part of the requested record, and—

(A) The official is not a denial authority—forward the request to the cognizant denial authority, with a

copy of the requested record, and comments and recommendations concerning disposition; or

(B) The official is a denial authority—take the action prescribed in § 701.106(c)(3) (i) or (ii) as appropriate.

(3) *Action by denial authority.* (i) If the denial authority determines that access should be granted to the entire record, he shall promptly make it available to the requesting individual in the manner prescribed in § 701.106(c)(2)(i), or direct the system manager to do so.

(ii) If the denial authority determines that access to the entire record should be denied under the criteria specified in paragraph (a)(5) (i), (ii), or (iii) of this section, he shall promptly send the requesting individual an original and one copy of a letter informing the individual of the denial of access and the reasons therefor, including citation of any applicable exemptions and a brief discussion of the significant and legitimate governmental purpose(s) served by the denial of access. The denial letter shall also inform the individual that he may request further administrative review of the matter within 120 days, by letter:

(A) If the record is from a civilian Official Personnel Folder or is contained on any other Civil Service Commission form, to—

Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street NW., Washington, DC 20415; or

(B) If for any other record, to—

Judge advocate General (Code 14L), Department of the Navy, Washington, DC 20370.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for seeking review of the initial determination.

(iii) A copy of the denial letter shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M) as provided in paragraph (b)(2)(iii) of this section.

(iv) If the denial authority determines that access to portions of the record should be denied under the criteria specified in paragraph (a)(5) (i), (ii), or (iii) of this section, he shall promptly make an expurgated copy of the record available to the requesting individual and issue a denial letter, in the manner and form provided in the preceding paragraph, as to the portions of the record that are required to be deleted.

(4) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for access, the Judge Advocate General shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. He is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination.

(i) Within 30 days of receipt of the request for review, if practicable, the Judge Advocate General shall inform the requesting individual, in writing, of the final determination and the action thereon.

(ii) If such determination has the effect of granting a request for access, in whole or in part, the Judge Advocate General may either provide access in accordance with paragraph (c)(2)(ii) (A) or (B) of this section, or direct the system manager to do so.

(iii) If the final determination has the effect of denying a request for access, in whole or part, the individual shall be informed of the reason(s) and statutory basis for the denial—including regulatory citations for any exemption exercised and an explanation of the significant and legitimate governmental purpose served by exercising the exemption—and of his rights to seek judicial review.

(iv) If the determination is based, in whole or part, on a security classification, the individual shall be apprised of the matters set forth in § 701.9(d)(4)(ii) of this subpart relating to declassification review and appeal.

(d) *Amendment procedures*—(1) *Criteria for determinations on requests for amendment.* (i) As further explained in § 701.111 of this subpart, many of the systems of records listed in Subpart G are exempt, in part,

from amendment requirements. Such exemptions, where applicable, may be exercised only by denial authorities (and by the designated review authorities upon requests for review of initial denials), and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose to be served by exercising the exemption.

(ii) If an available exemption is not exercised an individual's request for amendment of a record pertaining to himself shall be granted if it is determined, on the basis of the information presented by the requester and all other reasonably available related records, that the requested amendment is warranted in order to make the record sufficiently accurate, relevant, timely, and complete as to ensure fairness in any determination which may be made about the individual on the basis of the record. If the requested amendment would involve the deletion of particular information from the record, the information shall be deleted unless it is determined that—in addition to being accurate, relevant to the individual, timely, and complete—the information is relevant and necessary to accomplish a purpose or function required to be performed by the Department of the Navy pursuant to a statute or Executive order.

(iii) The foregoing is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any changes in such records should be made only through the procedures established for changing such records. These provisions are also not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-judicial action. For example, an individual would not be permitted to challenge a court-martial conviction under this subpart, but the individual would be able to challenge the accuracy with which a conviction has been recorded in a record.

(iv) As indicated in paragraph (a)(1) of this section the procedures in this paragraph are generally applicable to requests for amendment of records, irrespective of whether a particular record is contained in a system of records, provided that it can be identified and located.

(2) *Action upon a receipt of request.* Subject to the provisions of this paragraph, upon receipt of an individual's initial request for amendment of a record, the system manager (or official occupying a comparable position with respect to a record not contained in a system of records) shall acknowledge the request in the manner prescribed by paragraph (a)(6)(i) of this section and, within 30 days, if reasonably possible, take one of the following actions:

(i) If consideration cannot be given to the request because—

(A) The individual's identity is not satisfactorily verified;

(B) The individual has not furnished the information needed to locate the record;

(C) The individual has not provided adequate information as to how or why the record should be amended; or

(D) The request is erroneously addressed to an official having no responsibility for the record or system of records in question—

inform the individual of the correct means, or additional information needed, for obtaining consideration of his request for amendment (a request may not be rejected, nor may the individual be required to resubmit his request, however, unless this is essential for processing the request);

(ii) If the system manager determines that the individual's request to amend a record is warranted under the criteria in paragraph (d)(1) of this section, he shall promptly amend the record and advise the individual, in writing, of that action and its effect. The system manager also should attempt to identify other records affected by the requested amendment and should make other necessary amendments, Amendments to records should be made in accordance with existing directives and established procedures for changing records, if applicable and consistent with this subpart. The system manager shall advise previous recipients of the record for whom a disclosure accounting has been made that the record has been amended, and of the substance of the correction;

(iii) If the system manager is a denial authority, and denial of the request for amendment, in whole or part, is warranted, take the appropriate action prescribed in paragraph (d)(3) (ii) or (iii) of this section; or

(iv) If the system manager is not a denial authority, but denial of the request for amendment, in whole or part, appears to be warranted, forward the request to the cognizant denial authority with a copy of the disputed record, and comments and recommendations concerning disposition.

(3) *Action by denial authority.* (i) If the denial authority determines that amendment of the record is warranted under the criteria in paragraph (d)(1) of this section, he shall direct the system manager to take the action prescribed in paragraph (d)(2)(ii) of this section.

(ii) If the denial authority determines that amendment of the record is not warranted under the criteria in paragraph (d)(1) of this section, he shall promptly send the requesting individual an original and one copy of a letter informing him of the denial of the request and the reason(s) for the denial, including a citation of any exemption exercised and a brief discussion of the significant and legitimate governmental purpose(s) served by exercising the exemption. The denial letter shall inform the individual that he may request further administrative review of the matter, as follows:

(A) If the record is a fitness report or performance evaluation (including proficiency and conduct marks) from a military personnel file—by letter, within 120 days, to:

Assistant Secretary of the Navy (Manpower and Reserve Affairs), Department of the Navy, Washington, DC 20350; or

(B) If the record is from a civilian Official Personnel Folder or is contained in any other Civil Service Commission form—by letter, within 30 days, to:

Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street NW., Washington, DC 20415; or

(C) For any other record—by letter, within 120 days, to:

Judge Advocate General (Code 14L), Department of the Navy, Washington, DC 20370.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the reasons for seeking review of the initial determination denying the request for amendment. A copy of the denial letter shall be forwarded to the Chief of Naval Operations or Commandant of the Marine Corps, as provided in paragraph (b)(2)(iii) of this section.

(iii) If the denial authority determines that a request for amendment of a record should be granted in part and denied in part, he shall take the action prescribed in paragraph (d)(3)(ii) of this section with respect to the portion of the request which is granted, and the action prescribed in paragraph (d)(3)(ii) of this section with respect to the portion of the request which is denied.

(4) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for amendment of a record, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) or the Judge Advocate General, as appropriate, shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination, either granting or denying amendment, in whole or in part. Those officials are designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and effectuate the determination.

(i) Within 30 working days of receipt of the request for review, the designated reviewing official shall inform the requesting individual, in writing, of the final determination and the action thereon, except that the Assistant Secretary of the Navy (Manpower and Reserve Affairs) may authorize an extension of the time limit where warranted because a fair and equitable review cannot be completed within the prescribed time, or for other good cause. If an extension is granted, the requesting individual shall be informed, in

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writing, of the reason for the delay, and the approximate date on which the review will be completed and the final determination made.

(ii) If, upon completion of review, the reviewing official determines that denial of the request for amendment is warranted under the criteria in paragraph (d)(1) of this section, the individual shall be informed, in writing:

(A) Of the final denial of the request for amendment of the record, and the reason(s) therefor;

(B) Of the right to file with the appropriate system manager a concise statement of its individual's reason(s) for disagreeing with the decision of the agency, and that such statement of dispute must be received by the system manager within 120 days following the date of the reviewing authority's final determination;

(C) Of other procedures for filing such statement of dispute, and that a properly filed statement of dispute will be made available to anyone to whom the record is subsequently disclosed, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record;

(D) That prior recipients of the disputed record will be provided a copy of the statement of dispute, to the extent that the prior recipients can be ascertained from disclosure accountings which have been maintained; and

(E) Of his right to seek judicial review of the reviewing authority's refusal to amend a record.

(iii) If the reviewing official determines upon review that the request for amendment of the record should be granted, he shall inform the requesting individual of the determination, in writing, and he shall direct the system manager to amend the record accordingly, and to inform previous recipients of the record for whom disclosure accountings have been made that the record has been amended and the substance of the correction.

(iv) *Statements of dispute.* When an individual properly files a statement of dispute under the provisions of paragraph (d)(4) (ii) and (iii) of this section, the system manager shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently access, use, or disclose it. The notation itself should be integral to the record. For automated systems of records, the notation may consist of a special indicator on the entire record or on the specific part of the record in dispute. The system manager shall advise previous recipients of the record for whom accounting disclosure has been made that the record has been disputed, if the statement of dispute is germane to the information disclosed, and shall provide a copy of the individual's statement.

(A) The individual's statement of dispute need not be filed as an integral part of the record to which it pertains. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the system manager shall note that the information is disputed, and provide a copy of the individual's statement of dispute.

(B) The system manager may include a brief summary of the reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. Although these summaries may be treated as a part of the individual's record, they will not be subject to the amendment procedures of this paragraph.

§ 701.107 Disclosure to others and disclosure accounting.

(a) *Summary of requirements.* Subsection (b) of 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except pursuant to the written request or consent of the individual to whom the record pertains, unless the disclosure is authorized under one or more of the 11 exceptions noted in paragraph (b) of this section. Subsection (i)(1) of 5 U.S.C. 552a prescribes criminal penalties for personnel who knowingly and willfully make unauthorized disclosures of information about individuals from an agency's records. Subsection (c) of 5 U.S.C. 552a requires accurate account-

ings to be kept, as prescribed in paragraph (c) of this section in connection with most disclosures of a record pertaining to an individual (including disclosures made pursuant to the individual's request or consent). This is to permit the individual to determine what agencies or persons have been provided information from the record, enable the agency to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail for review for the agency's compliance with 5 U.S.C. 552a.

(b) *Conditions of disclosure.* No record contained in a system of records shall be disclosed, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record falls within one of the exceptions specified below. Disclosure to third parties on the basis of the written consent or request of the individual is permitted, but not required, by this subpart.

(1) *Intra-agency.* Disclosure may be made to personnel of the Department of the Navy or other component of DoD (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) This may include, for example, disclosure to personnel managers, review boards, discipline officers, court-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Navy who may be included are: Personnel of the Joint Chiefs of Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include a transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Progran (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs, they should be treated under paragraph (d)(1) of this section for disclosure accounting purposes.

(2) *Freedom of Information Act.* Disclosure may be made of those records, or information obtained from the records, required to be released under the provisions of the Freedom of Information Act and 32 CFR Part 701, Subparts A–D. That act has the general effect of requiring the release of any record which does not fall within one of the nine exemptions specified in § 701.5(b)(4)(ii), including an exemption for records which, if disclosed, would result in a clearly unwarranted invasion of the personal privacy of an individual. Examples of information pertaining to military personnel which is normally released are: Name, rank or rate, date of rank, amounts of pay an allowances included in gross compensation, duty status, present and past duty stations, duty station address, finalized future duty station, office phone number, source of commission, military and civilian educational level, and promotion sequence number. Similar examples pertaining to civilian employees are: name, grade, duty station, date of employment, title or position, gross salary, office phone number, and office address. The information specified in the above examples may be provided without requiring a written request. For guidelines concerning disclosure of other items of information pertaining to individuals, see 32 CFR Part 701, Subpart B. Disclosure accountings are not required for disclosures made under the Freedom of Information Act.

(3) *Routine use.* Disclosure may be made for a "routine use" (as defined in

§ 701.105(f)) that is compatible with the purpose for which the record is collected and listed as a routine use in the applicable record system notice published in the FEDERAL REGISTER in accordance with § 701.108 of this subpart. The routine uses listed in the applicable record system notice, rather than those listed in the applicable Privacy Act statement, are controlling, although the lists should be similar. Disclosure accountings are required for disclosures made pursuant to a routine use.

(4) *Bureau of the Census.* Disclosure may be made to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity authorized by law. Disclosure accountings are required for disclosures made to the Bureau of the Census.

(5) *Statistical research or reporting.* Disclosure may be made to a recipient who has provided adequate written assurance that the record will be used solely as a statistical research or reporting record, provided the record is transferred in a form that is not individually identifiable (i.e., the identity of the individual cannot be deduced by tabulation or other methodology). The written request must state the purpose of the request, and will be made a part of the activity's accounting for the disclosure. Accountings are not required when activities publish gross statistics concerning a population in a system of records (e.g., statistics on employee turnover rates, military reenlistment rates, and sick leave usage rates).

(6) *National Archives.* Disclosure may be made to the National Archives when the record has sufficient historical or other value to warrant continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value. Records transferred to a federal records center for storage or safekeeping do not fall under this provision. Such transfers are not considered disclosures under this act, since the records remain under the control of the transferring element. Accounting is not required for transfers of records to federal records centers. Disclosure accountings are required for disclosures made to the National Archives.

(7) *Civil or criminal law enforcement activity.* Disclosure may be made to another agency or instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the activity which maintains the record, specifying the particular record desired and the law enforcement purpose for which the record is sought. The head of the agency or instrumentality may have delegated authority to request records to other officials. Requests by these designated officials shall be honored if they provide satisfactory evidence of their authorization to request records. Blanket requests for all records pertaining to an individual shall not be honored. A record may also be disclosed to a law enforcement activity, provided that such disclosure has been established as a "routine use" in the published record system notice. Disclosure to foreign law enforcement agencies is not covered under the provisions of this paragraph. Such disclosures may be made only pursuant to an established "routine use" published in the record system notice or pursuant to other governing authority. Disclosure accountings are required for disclosures to civil or criminal law enforcement agencies.

(8) *Emergency conditions.* Disclosure may be made under emergency conditions involving compelling circumstances affecting the health and safety of a person, provided that notification of the disclosure is transmitted to the last known address of the individual to whom the record pertains. For example, an activity may disclose records when the time required to obtain the consent of the individual to whom the record pertains might result in a delay which could impair the health or safety of a person. The individual about whom the records are disclosed need not necessarily be the individual whose health or safety is in peril (e.g., release of dental charts on several individuals

in order to identify a person injured in an accident). In instances where information under alleged emergency conditions is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone numnber. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call. Disclosure accountings are required for disclosures made under emergency conditions.

(9) *Congress and Members of Congress.* Disclosure may be made to either House of Congress, or, to the extent of matters within its jurisdiction, to any committee or subcommittee thereof, or to any joint committee of Congress or subcommittee thereof. Disclosure may not be made, howerver, to a Member of Congress requesting in his individual capacity or on behalf of a constituent, except in accordance with the following rules:

(i) Upon receipt of an oral or written request from a Member of Congress or his staff, inquiry should be made as to the identity of the originator of the request. If the request was prompted by a request for assistance by the individual to whom the record pertains, the requested information may be disclosed to the requesting Congressional office.

(ii) If the request was originated by a person other than the individual to whom the record pertains, the Congressional office must be informed that the requested information cannot be disclosed without the written consent of the individual to whom the record pertains. If the Congressional office subsequently states that it has received a request for assistance from the individual or has obtained the individual's written consent for disclosure to that office, the requested information may be disclosed.

(iii) If the Congressional office requests the Department of the Navy to obtain the consent of the individual to whom the record pertains, that office should be infomed that it is the policy of the Department not to interfere in the relationship of a Member of Congress and his constituent, and that the Department therefore does not contact an individual who is the subject of a congressional inquiry.

(iv) If the Congressional office insists, an attempt should be made to secure the written consent of the individual to whom the record pertains. If neither the congressional office nor the Department of the Navy obtains the individual's written consent, only information required to be released under the Freedom of Information Act and 32 CFR Part 701, Subparts A-D should be disclosed. (See paragraph (b)(2) of this section).

Disclosure accountings are required for disclosures made to Congress or Members of Congress, except nonconsensual disclosures pursuant to the Freedom of Information Act provided for in paragraph (b)(9)(iv) of this section.

(10) *Comptroller General.* Disclosure may be made to the Comptroller General of the United States, or to any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office. See § 701.103(a)(3), of this part, and SECNAVINST 5741.2E. Disclosure accountings are required for disclosures to the Comptroller General or General Accounting Office.

(11) *Court of competent jurisdiction.* Disclosure may be made in response to an order from a court of competent jurisdiction, subject to the following provisions:

(i) When a record is disclosed under compulsory legal process, and the issuance of that order is made public by the court which issued it, activities shall make reasonable efforts to notify the individual to whom the record pertains of the disclosure and the nature of the information provided. This requirement may be satisfied by notifying the individual by mail at the last known address contained in the activity records. Disclosure accountings are required for disclosures made pursuant to court orders.

(ii) Upon being served with an order which is not a matter of public record, an activity shall seek to be advised as to when it will become public. An accounting for the disclosure shall be made at the time the activity complies with the order, but neither the identi-

ty of the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the concerned individual unless the court order has become a matter of public record.

(c) *Disclosure accountings*—(1) *Responsibilities.* With respect to a disclosure of a record which it maintains in a system of records, each activity is responsible for keeping an accurate accounting of the date, nature, and purpose of the disclosure, and the name and address of the person or agency to whom the disclosure is made. When disclosure is made by an activity other than the activity that is responsible for maintaining the record, the activity making the disclosure is responsible for giving written notification of the above information to the activity responsible for maintaining the record, to enable the latter activity to keep the required disclosure accounting.

(2) *Disclosures for which accountings are required.* A disclosure accounting is required for all disclosures of records maintained in a system of records, except: Intra-agency disclosures pursuant to paragraph 701.107(b)(1) of this section; Freedom of Information Act disclosures pursuant to paragraphs (b) (2) or (9)(iv) of this section; or if they involve gross statistics covering a population of a system of records, and identification of individuals is not possible, disclosures for statistical research or reporting purposes pursuant to paragraph (b)(5) of this section. A disclosure accounting is required for a disclosure made to another person or agency pursuant to the request or consent of the individual to whom to record pertains. (There is no requirement for keeping an accounting for disclosures of disclosure accountings.)

(3) *Accounting method.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. For most paper records, it may be suitable to maintain the accountings on a record-by-record basis, physically affixed to the records. The primary criteria are that the selected method be one which will:

(i) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him;

(ii) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(iii) Provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart.

(4) *Retention of accounting record.* A disclosure accounting, if one is required, shall be maintained for the life of the record to which the disclosure pertains, or for at least five years after the date of the disclosure for which the accounting is made, whichever is longer.

(5) *Accounting to the individual.* Unless an applicable exemption has been exercised, system managers or other appropriate custodial officials shall provide all information in the disclosure accounting to an individual requesting such information concerning his records, except entries pertaining to disclosures made pursuant to paragraph (b)(1)(ii) of this section, and disclosures made at the written request of the head of another agency or government instrumentality for law enforcement purposes under paragraph (b)(7) of this section. Activities should maintain the accounting of the latter two types of disclosures in such a manner that the notations are readily segregable, to preclude improper release to the individual. The process of making the accounting available may also require transformation of the data in order to make it comprehensible to the individual. Requests for disclosure accountings otherwise available to the individual may not be denied unless a denial authority (or the designated review authority) has exercised an applicable exemption and denied the request, and then only when it has been determined that denial of the request would serve a significant and legitimate Government purpose (e.g., avoid interferring with an ongoing law enforcement investigation). System managers, denial authorities, and the designated review authority shall follow appropriate procedures prescribed in § 701.106(b), to exercise an exemption, to deny a re-

quest for an accounting of disclosures, and to review such denials.

(d) *Accuracy requirements.* Prior to disclosing any record about an individual to any person other than an agency, and other than pursuant to 5 U.S.C. 552a and 32 CFR Part 701, Subparts A-D, reasonable efforts are required to ensure that such records are accurate, complete, timely, and relevant for Department of the Navy purposes. It may be appropriate to advise the recipient that the information was accurate as of a specific date, or otherwise give guidance concerning its quality.

(e) *Mailing lists.* No activity nor any member or employee of the Department of the Navy shall sell or rent individuals' names and addresses unless such action is specifically authorized by law. This provision should not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 701.109 Collection of personal information from individuals.

(a) *Collection directly from individuals.* Personal information shall be collected, to the greatest extent practicable, directly from the individual when the information may adversely affect an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made when warranted. The following are examples, not necessarily exhaustive, of situations which may warrant exceptions:

(1) There is need to ensure the accuracy of information supplied by an individual by verifying it through a third party, e.g., verifying information for a security clearance;

(2) The nature of the information is such that it can be obtained only from a third party, such as supervisor's assessment of an employee's performance in a previous job or assignment; or

(3) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

(b) *Informing individuals from whom personal information is requested.* (1) Individuals who are asked to supply personal information about themselves for a system of records must be advised of:

(i) The authority (statute or Executive order) which authorizes the solicitation;

(ii) All major purposes for which the Department of Defense uses the information (e.g., pay entitlement, retirement eligibility, or security clearance);

(iii) A brief summary of those routine uses to be made of the information as published in the FEDERAL REGISTER, and distributed by SECNAV notice, and

(iv) Whether disclosure is mandatory or voluntary, and the possible consequences for failing to respond.

(2) This statement, which is referred to as a "Privacy Act statement," must be given regardless of the medium used in requesting the information, e.g., a blank sheet, preprinted form with a control number, format, questionnaire, survey sheet, or interview. It may be provided on the form used to collect the information, or on a separate form or sheet, a copy of which may be retained by the individual.

(3) When the privacy statement is to be attached or provided with the form, the statement will be assigned the same identifying number as the form used in collecting the information, and the suffix, "Privacy Act Statement." For example, a DD Form 398 would be identified as "DD Form 398—Privacy Act Statement." For unnumbered formats, such as questionnaires and survey report forms, the Privacy Act statement will bear the report control symbol, if one applies, or the OMB number, i.e., "OMB Approval No. 21—R0268, Privacy Act Statement." The statement will be positioned in such a manner that individuals from whom the information about themselves is being collected will be informed about the act before they begin to furnish any of the information requested.

(4) For the purpose of determining whether a Privacy Act statement is required, "personal information" should be considered to be information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. It ordi-

narily includes, for example, information pertaining to an individual's financial, family, social, and recreational affairs; his medical, educational (other than military training), employment, or criminal history; or information that identifies describes, or affords a basis for inferring personal characteristics, such as finger or voice prints or photographs. It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his Federal employment or military assignment.

(5) The head of the proponent activity (i.e., the initiating or sponsoring activity) is responsible for determining whether a Privacy Act statement is required, and for ensuring that it is prepared and available as an attachment or as a part of the form, etc.

(c) *Requesting an individual's social security number (SSN).* Department of the Navy activities may not deny an individual any right, benefit, or privilege provided by law because the individual refuses to disclose his SSN, unless such disclosure is required by Federal statute or, in the case of systems of records in existence and operating before January 1, 1975, where such disclosure was required under statute or regulation adopted prior to January 1, 1975 to verify the identity of an individual. E.O. No. 9397 authorizes DoD components to use the SSN as a system of numerical identification of individuals.

(d) *Informing an individual when requesting his SSN.* (1) When an individual is requested to disclose his social security number, he must be informed:

(i) Whether such disclosure is mandatory or voluntary;

(ii) By what statutory or other authority the number is solicited; and

(iii) What uses will be made of it.

(2) An activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act statement for the SSN, alone, or a merged Privacy Act statement, covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his SSN, the activity must be prepared to identify the individual by alternate means.

(3) Once a military member of civilian employee of the Department of the Navy has disclosed his SSN for purposes of establishing personnel, financial, or medical records upon entry into naval service or employment, the SSN becomes his service or employment identification number. It is not required that such an individual be informed of the items under paragraph (d)(1) of this section when he is subsequently requested to provide or verify this identification number in connection with those records.

§ 701.110 Safeguarding personal information.

(a) *Legislative requirement.* The Privacy act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records, and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is required.

(b) *Responsibility.* At each location, and for each system of records, an official shall be designated as having responsibility for safeguarding the information therein. Specific safeguards for individual systems must be tailored to the existing circumstances, with consideration given to sensitivity of the data, need for continuity of operations, need for accuracy and reliability in operations, general security of the area, cost of safeguards, etc.

(c) *Minimum safeguards.* Ordinarily, personal information should be afforded at least the protection required for information designated as "For Official Use Only". (See SECNAVINST 5570.2B.) For privacy, the guideline is to provide reasonable safeguards to prevent inadvertent or unauthorized disclosures of record content, including during processing, storage, transmission, and disposal.

(d) *Automatic data processing.* The Director, Department of the Navy Automatic Data Processing Management is responsible for determining and formulating policies and procedures, as necessary, to ensure that ADP systems containing personal information contain adequate safeguards to protect personal privacy, and are in accordance with SECNAVINST 5230.4 and OPNAVINST 5510.1E.

(e) *Disposal.* Reasonable care must be taken to ensure that personal information is not subject to unauthorized disclosure during records disposal. If contractors are hired to haul trash containing personal information, contract provisions as specified in § 701.112 should be incorporated in the contract. If paper trash containing personal information is sold for recycling, legal assistance should be obtained to insert in the sale contract clauses that will make the buyer a Government contractor subject to the provisions of 5 U.S.C. 552a.

§ 701.111 Exemptions.

(a) *Summary.* Subsections (j) and (k) of 5 U.S.C. 552a authorize the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements of 5 U.S.C. 552a. In accordance with 32 CFR Part 701, Subpart E, publication of a general notice of a proposed rulemaking concerning exemptions for systems of records is required to appear in the FEDERAL REGISTER at least 30 days prior to the effective date, in order to afford interested persons an opportunity to comment. 32 CFR 701, Subpart G indicates systems so designated, the type of exemption, the authority and reasons for the exemption, and the provisions of 5 U.S.C. 552a from which each system has been exempted.

(b) *Subsection (j)(2) exemptions.* To be eligible for an exemption under the authority of subsection (j)(2), 5 U.S.C. 552a requires that a system of records be maintained by an activity whose principal function involves the enforcement of criminal laws, and that the system consist of criminal identifying data, criminal investigative records, or reports concerning an individual at any stage of the law enforcement process, from indictment or referral of charges to release from supervision.

(1) By perfecting a subsection (j)(2) exemption, a system of records may be exempted from one or more of the following provisions of 5 U.S.C. 552a as specified in the published rule pertaining to the system: Subsections (a) (3) and (4), (d), (e) (1) through (3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

(2) These cited subsections include the requirements for providing individuals with opportunity to obtain notification, access, and amendment concerning their records, the requirement for providing individuals with disclosure accountings and notification concerning disclosures pursuant to court orders, the requirement for providing individuals with Privacy Act statements, the requirement for collecting personal information directly from the individuals concerned, and the provisions allowing individuals to seek civil remedies against the Department.

(c) *Subsection (k) exemptions.* Exemptions under the authority of subsection (k) of 5 U.S.C. 552a differ from those under subsection (j)(2). While broader categories of systems are eligible for exemption under subsection (k), the effect of a subsection (k) exemption is more limited in scope than is a subsection (j)(2) exemption. Subsection (k) exemptions apply only to eligible records in designated systems, and may exempt the eligible records only from one or more of the following provisions of 5 U.S.C. 552a: Subsections (c)(3), (d), (e)(1). (e)(4) (G) through (I), and (f). These subsections include the requirements for providing individuals with opportunity to obtain notification, access, and amendment concerning their records, and the requirement for providing individuals with accountings of disclosures. To be eligible for a subsection (k) exemption, the pertinent records within a designated system must contain one or more of the following:

(1) Information specifically authorized to be classified under OPNAVINST 5510.1E and Executive Order No. 11652; ((k)(1) exemption);

(2) Investigative records compiled for law enforcement purposes, other than material covered under a subsection (j) exemption; ((k)(2) exemption);

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. 3056; ((k)(3) exemption);

(4) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 ((k)(4) exemption);

(5) Confidential source information (see paragraph (e) of this section) in investigative records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information; ((k)(5) exemption);

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; ((k)(6) exemption); or

(7) Confidential source information (see paragraph (e) of this section) in evaluation records used for determining potential for promotion in the armed services ((k)(7) exemption).

(d) *Limitations on denying notification, access, and/or amendment on the basis of an exemption*—(1) *Classified information.* Prior to denying a request for notification, access, or amendment concerning a classified record on the basis of a subsection (k)(1) exemption, denial authorities having classification jurisdiction over the classified matters in the record shall review the record to determine if the classification is proper under the criteria of OPNAVINST 5510.1E. If the denial authority does not have classification jurisdiction, immediate coordination shall be effected with the official having classification jurisdiction, in order to obtain a review of the propriety of the classification. If it is determined upon review that the classification is proper, consideration shall also be given to the appropriateness of permitting the requester to view the record in classified form, provided that he has or can be given the requisite security clearance.

(2) *Law enforcement records*—Requests for notification or access shall not be denied on the basis of a subsection (k)(2) exemption if the requested record has been used as a basis for denying the individual a right, benefit, or privilege to which he would be entitled in the absence of the record, except that access may be limited to the extent necesssary to protect the identity of a confidential source, as defined in paragraph (e) of this section. Additionally, neither a subsection (j)(2) nor a subsection (k)(2) exemption shall be the basis for a denial of a request for notification or access concerning a record, or a portion thereof, unless granting the request is in accordance with the exemptions specified in 5 U.S.C. 552a, and would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trail or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source or disclose confidential information furnished only by a confidential source in the course of a criminal investigation or in the course of a lawful national security intelligence investigation;

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their effectiveness;

(vi) Endanger the life or physical safety of law-enforcement personnel; or

(vii) Otherwise be deemed not releasable under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A-D.

(e) *Confidential sources.* For the purposes of subsection (k) exemptions, a "confidential source" is a person who has furnished information to the Federal Government under:

(1) An express promise that his identity would be held in confidence, or

(2) An implied promise made prior to September 27, 1975, that his identity would be held in confidence.

(f) *Promises of confidentiality.* Express promises of confidentiality shall be granted on a selective basis, and only when such promises are needed and are in the interest of the service. Officials exercising denial authority shall establish appropriate procedures and standards governing the granting of confidentiality for records systems within their cognizance.

§ 701.112 Contractors.

Any unit, activity, or official letting a contract that involves the maintenance of a system of records to accomplish a Department of the Navy purpose shall include in that contract such terms as are necessary to incorporate the relevant provisions of 5 U.S.C. 552a.

§ 701.117 Rules for amendment requests.

5 U.S.C. 552a provides for individuals to request amendment of their personal records where the individuals believe the records to be inaccurate, irrelevant, untimely, or incomplete. The following rules for amendment requests are in effect:

(a) Requests must be in writing and must indicate that they are being made under the Privacy Act (5 U.S.C. 552a), this subpart, or SECNAVINST 5211.5A. Requests should contain sufficient information to locate and identify the particular record which the requestor is seeking to amend, (e.g., full name, social security number, date of birth, etc.). A request should also contain a statement of the changes desired to be made to the record, the reasons for requesting amendment, and any available information the requestor can provide in support of the request, including pertinent documents and related records.

(b) Requests for amendment must be submitted to the apropriate system manager designated in the published record system notices.

(c) A letter indicating receipt will be sent to the requestor within 10 working days after the request has been received by the appropriate system manager. The letter will contain details as to when the requestor may expect to be advised of action taken on the request. The requestor may also be asked to provide additional verification of his identity. This is to protect the privacy of other individuals by ensuring that the requestor is seeking to amend his own records and not, inadvertently or intentionally, the records of another individual.

(d) A letter indicating whether or not the request for amendment has been granted will be sent to the requestor as soon as a decision has been reached by the appropriate authority. If it is determined that the requested amendment is warranted, the requestor will be advised of the action taken and of the effect of that action. If it is determined that the requested amendment is not warranted, the requestor will be advised of the reasons for the refusal and of the procedures and time limits within which the requestor can seek further review of the refusal.

§ 701.118 Rules of conduct under the Privacy Act.

(a) *Maintaining personal records.* It is unlawful to maintain systems of records about individuals without prior announcement in the FEDERAL REGISTER. Anyone who does is subject to criminal penalties up to $5,000. Even with such notice, care shall be taken to keep only such personal information as is necessary to do what law and the President, by executive order, require. The information is to be used only for the purposes described in the FEDERAL REGISTER.

(b) *Disclosure.* Information about an individual shall not be disclosed to any unauthorized individual. Anyone who makes an unauthorized disclosure on purpose may be fined up to $5,000. Every member or employee of the Department of the Navy who maintains records about individuals has an obligation to do his part in protecting personal information from unauthorized disclosure. This subpart describes when disclosures are authorized.

(c) *Individual access.* Every individual, with certain exceptions, has the right to look at any record the Department of the Navy keeps on him, to copy it, and to request to have it corrected if he considers it wrong. The individual attempting to exercise these

rights shall be given courteous and considerate assistance.

(d) *Ensuring accuracy.* The Department of the Navy has an obligation to use only accurate, timely, relevant, and complete information when making decisions about individuals. Every member, official, and employee involved in keeping records on individuals shall assist in the discharge of this obligation.

Subpart G—Privacy Act Exemptions

AUTHORITY: Pub. L. 93-579, 5 U.S.C. 552a.

SOURCE: 41 FR 50672, Nov. 17, 1976, unless otherwise noted.

§ 701.120 Purpose.

This subpart contains rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and § 701.111 of this part, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.121 Exemption for classified records.

All systems of records maintained by the Department of the Navy and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(K)(1), to the extent that the system contains any information properly classified under Executive Order 12065 and predecessor orders and that is required to be safeguarded in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain records systems not otherwise specifically designated for exemptions herein may contain isolated items of information that have been properly classified.

(E.O. 12065)

[44 FR 46272, Aug. 7, 1979]

§ 701.122 Exemption for security operations activities.

ID—N00011 J03

Sysname: Security Incident System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a; (c)(3), (c)(4), (d), (e)(2), (3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

AUTHORITY: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by this agency relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his records, and the reason therefor, necessitate the exemption of this system of records from the requirements of other cited provisions.

§ 701.123 Exemptions for specific Navy record systems.

(a) Office of Civilian Personnel

(1) *ID—N96021—02*

Sysname: Supervisor's Report of Potential to Perform and Reference Check Records System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (g) and (H), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (5).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment or access to classified information, and that was obtained by providing express or implied promise to the source that his identity would not be revealed to the subject of the record.

(2) *ID—N96021—44A*

Sysname: Navy Central Clearance Group (NCCG) Records.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) and (H), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1) and (5).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, or access to classified information, and that was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record.

(3) *ID—N96021—44B.*

Sysname: Civilian Personnel Security Files.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (2), and (5).

Reasons: Exempted portions of this system contain information which has been properly classified under Executive Order 11652, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment or access to classified information, and that was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record. Granting individuals access to certain information compiled for law enforcement purposes in this system of records could interfere with orderly investigations by disclosing the existence of investigations and investigative techniques, and result in the concealment, destruction, or fabrication of evidence.

(b) Bureau of Naval Personnel.

(1) *ID—N00022.81.*

Sysname: Personnel Security Eligibility Information System.

Exemption: Portions of this system of records are exempt from the following subsections of title 5, United States Code, section 552a: (c)(3), (d), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k), (1), (2), (5), and (7).

Reasons: Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provided information to the Government under an express or implied promise of confidentiality.

(2) *ID—N00022.82.*

Sysname: Navy Personnel Evaluation System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (2), (5), and (7).

Reasons: Granting individuals access to information collected and maintained in this system could result in disclosure of classified material, jeopardize the safety of informants and witnesses and their families, and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified material and to information that will not disclose the sources who provided the information under the express or implied promise of confidentiality.

(3) *ID—N00022EQOPPINFOSYS.*

Sysname: Equal Opportunity Information and Support System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1) and (5).

Reasons: Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(4) *ID—N00022OFFPROMSYS.*

Sysname: Officer Promotion System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (5), (6), and (7).

Reasons: Granting individuals access to this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(5) *ID—N00022PERSRECSYS.*

Sysname: Navy Personnel Records System.

Exemption: Portions of this system of records are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1) and (5).

Reasons: Granting individuals access to certain portions of the information collected and maintained in this system of records could result in the unauthorized disclosure of classified material. Material will be screened in order to provide access to unclassified information that does not disclose the identity of a source who provided information under an express or implied promise of confidentiality.

(c) Navy Recruiting Command.

(1) *ID—N66715.20 SAS*

Sysname: Officer Selection and Appointment System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material or to information that does not disclose the identity of a confidential source.

(2) *ID—N66715.3RESS.*

Sysname: Recruiting Enlisted Selection System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the unauthorized disclosure of classified material or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material or to information that does not disclose the identity of a confidential source.

(d) Naval Security Group Command

(1) *ID—N00069NSGHG12PAC01.*

Sysname: Naval Security Group Personnel Security/Access Files.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1) through (5).

Reasons: Exempted portions of this system contain information that has been properly classified under Executive Order 11652, and that is required

to be kept secret in the interest of national defense or foreign policy.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility, or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record.

(e) Naval Investigative Service.

ID—N63285-01.

Sysname: NIS Investigative Files System.

Exemption: (1) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4), (G) through (I), (e)(5), (e)(8), (f) and (g).

AUTHORITY: (1) 5 U.S.C. 552a(j)(2).

Reasons: (1) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of the other cited provisions.

Exemption: (2) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: (2) 5 U.S.C. 552a(k) (1) through (6).

Reasons: (2) The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony.

Exempt portions of this system also contain information that has been properly classified under Executive Order 12065, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his identity would not be revealed to the subject of the record. The notice for this system of records published in the FEDERAL REGISTER sets forth the basic statutory or related authority for maintenance of the system. However, in the course of criminal investigations, cases, and matters, the Naval Investigative Service will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation that may not be relevant to a specific prosecution. In the interest of effective law enforcement, it is necessary to retain such information in this system of records, since it can aid in establishing

patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

The categories of sources of records in this system have been published in the FEDERAL REGISTER in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system is exempted from procedures for notice to an individual as to the existence of records pertaining to him dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system contain screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigative Service. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(f) Naval Intelligence Command.

(1) ID—N00015.L1000

Sysname: Naval Intelligence Management Information System (NIMIS).

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a; (c)(3), (d), (e)(4) (G), and (H), and (f).

AUTHORITY: 5 U.S.C. 552(k)(1).

Reasons: Exempted portions of this system contained information that has been properly classified under Executive Order 11652 and that is required to be kept secret in the interest of national defense or foreign policy.

(2) ID—N00015.ON153-1A

Sysname: Status of Downed Naval Aviation Personnel, Southeast Asia Operations.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k)(1).

Reasons: Exempted portions of this system contain information that has been properly classified under Executive Order 11652, and that is required to be kept secret in the interest of national defense or foreign policy.

(3) ID—N00015.OOK1

Sysname: Special Intelligence Personnel Access File.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k)(1) and (5).

Reasons: Exempted portions of this system contain information that has been properly classified under Executive Order 11652, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record.

(g) Fleet Aviation Specialized Operational Training Group, Pacific Fleet.

(1) ID—N09191 POW DEBRIEFS

Sysname: Summary Debriefs of Former Prisoners of War.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k)(1).

Reasons: Exempted portions of this system contain information that has been properly classified under Executive Order 11652, and that is required to be kept secret in the interest of national defense or foreign policy.

(h) Naval Material Command.

(1) ID—N00037 CNM (MAT 09G1)

Sysname: Investigatory (Fraud System).

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (2), and (5).

Reasons: Exempt portions of this system of records contain information that has been properly classified under Executive Order 11652, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determinination as to qualitifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record. Granting individuals access to certain information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by this component.

(i) Naval Resale System Office.

(1) ID—N00250 IR-PERS-RECORD

Sysname: Industrial Relations Personnel Records.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d), (e)(4) (G) and (H), and (f).

AUTHORITY: 5 U.S.C. 552a(k)(5) and (6).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(j) Navy and Marine Corps Exchanges and Commissaries.

(1) ID—N00011J010

Sysname: Navy and Marine Corps Exchange and Commissary Security Files.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(k) Naval Clemency and Parole Board.

(1) ID—N31708 NC&PB

Sysname: Naval Clemency and Parole Board files.

90-111 O—82——7

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(4), (d), (e)(4) (G) and (H), and (f).

AUTHORITY: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records of documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(l) Office of the Secretary.

(1) ID-N 31698. WHSP.

Sysname: White House Support Program.

Exemption: Portions of this system of records of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (1), (2), (3), and (5).

Reasons: Exempted portions of this system may contain information which has been properly classified under Executive Order 12065 and predecessor orders which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility , or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of his system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provided information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(m) *Bureau of Medicine and Surgery.*

(1) ID-N0001810.

Sysname: Child Advocacy Program Files.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a; (c)(3) and (d).

AUTHORITY: 5 U.S.C. 552a(k)(2).

Reasons: Exemptions are needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

[41 FR 50672, Nov. 17, 1976, as amended at 42 FR 9382, Feb. 16, 1977; 42 FR 35647, July 11, 1977; 44 FR 46272, Aug. 7, 1979]

§ 701.124 Exemptions for specific Marine Corps record systems.

(a) ID—MMN00001

Sysname: Deserter Inquiry File.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3),

(c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

AUTHORITY: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his records, and the reasons therefor, necessitate the exemption of this system of records from the requirements from the other cited provisions.

(b) *ID—MMN00024*

Sysname: Absentee Processing Files.

Exemption: Portions of this system of records are exempted from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

AUTHORITY: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of the other cited provisions.

(c) *ID—MMN00018*

Sysname: Base Security Incident Reporting System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

AUTHORITY: 5 U.S.C. 552(a)(j)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of the other cited provisions.

(d) *ID—MMN00019*

Sysname: Drug/Alcohol Abuse Reporting Program.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k)(2).

Reasons: Granting individuals access to portions of this system of records relating to the enforcement of criminal laws could interfere with orderly investigations and with the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of the records in this record system, and the reasons therefor, necessitate the exemption of this system of records from the requirements of the other cited provisions.

(e) ID—MMN00022

Sysname: Vehicle Control System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

AUTHORITY: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to portions of records maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of the other cited provisions.

(f) ID-MMN00023

Sysname: Prisoner Records.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8) (f) and (g).

AUTHORITY: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of the other cited provisions.

(g) ID—MIN00001

Sysname: Personnel Security Eligibility and Access Information System.

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

AUTHORITY: 5 U.S.C. 552a(k) (2), (3), and (5), as applicable.

Reasons: Exempt portions of this system contain information that has been properly classified under Executive Order 11652, and that is required

to be kept secret in the interest of national security or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for federal civilian employment, military service, federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his identity would not be revealed to the subject of the record.

Exempted portions of this system further contain information that identifies sources who confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

[41 FR 50672, Nov. 17, 1976, as amended at 42 FR 9382, Feb. 16, 1977]

PART 705—PUBLIC AFFAIRS REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031.

SOURCE: 41 FR 29101, July 15, 1976, unless otherwise noted.

§ 705.1 Purpose.

The regulations and rules in this part prescribe policies and procedures for the Department of the Navy pertaining to public affairs practices.

§ 705.2 Chief of Information and the Office of Information (CHINFO).

(a) The Chief of Information is the direct representative of the Secretary of the Navy and of the Chief of Naval Operations in all public affairs and internal relations matters. As such, the Chief of Information has the authority to implement public affairs and internal relations policies and to coordinate Navy and Marine Corps public affairs and internal relations activities of mutual interest.

(b) The Chief of Information will keep Navy commands informed of Department of Defense policies and requirements. No command within the Department of the Navy, except Headquarters, Marine Corps, will deal directly with the Office of the Assistant Secretary of Defense (Public Affairs) on public affairs matters unless authorized to do so by the Chief of Information.

(c) The Chief of Information will be consulted on all Navy public affairs and internal relations matters and informed of all operations and proposed plans and policies which have national

or international (and in the case of audio-visual material, regional) public affairs aspects.

(d) The Chief of Information heads the Navy Office of Information, the Navy Internal Relations Activity (NIRA), the Office of Information Branch Offices (NAVINFOs), the Navy Public Affairs Center (NAVPACENs) and the Fleet Home Town News Center (FHTNC). In addition, the Chief of Information has responsibility (on behalf of the Secretary of the Navy as Executive Agent for the Department of Defense) for the High School News Service and has operational control of the U.S. Navy Band, Washington, D.C.

(e) The Navy Office of Information Branch Offices (NAVINFOs) are located in Atlanta, Boston, Chicago, Dallas, Los Angeles, and New York. As representatives of the Secretary of the Navy, Chief of Naval Operations, and Chief of Information, the NAVINFOs have a primary mission of providing direct liaison with local and regional mass communications media.

(1) The function of the NAVINFOs are as follows:

(i) Establish and maintain close personal relationships with local television, radio, film, publishing, and other mass-media organizations including minority-group-oriented media.

(ii) Seek ways through these media to inform the public about naval personnel and activities.

(iii) Provide assistance to media organizations and respond to their interest in Navy programs, stories, and features. In this regard, maintain informal liaison with various information offices afloat and ashore in order to respond to requests from local media representatives, particularly those from inland areas, who desire to visit fleet units or activities ashore.

(iv) Provide advice on Navy cooperation and assistance, as appropriate, to representatives of national industrial and commercial organizations, including advertising agencies.

(v) Maintain a library of Navy motion picture films for use by local television stations, distribute news films and audio material, and otherwise perform normal audio-visual functions at the local level.

(vi) Provide personnel and other assistance as appropriate, to special Command Information Bureaus and public information staffs of other naval activities as directed by the Chief of Information.

(vii) Advise the Chief of Information on current trends and significant problems relating to local media requirements.

(viii) Seek ways to support the long-range goals and immediate priorities of the Navy.

(ix) Provide advice and assistance in the placement of news and feature materials to the field activities of the Navy Recruiting Command.

(x) Perform such other tasks as may be assigned by the Chief of Information.

(2) Additionally, NAVINFO Los Angeles is the Navy representative for all appropriate liaison with motion picture and network television offices in the Hollywood area. Naval activities will channel all requests for information or assistance from these media to NAVINFO Los Angeles, which will coordinate with CHINFO.

(3) Additionally, NAVINFO New York is the Navy representative for all appropriate liaison with television and radio networks in the New York area and with magazine and book publishers in that area. Requests for assistance originating from these media should be directed to NAVINFO New York, which will coordinate with CHINFO.

(4) Except as specifically directed by CHINFO, the Branch Offices do not have responsibility or authority for community relations or internal relations.

(5) Direct liaison between NAVINFOs and Naval District public affairs offices, Navy recruiters and other naval activities afloat and ashore is encouraged.

(f) Areas covered by the respective offices are:

(1) NAVINFO Atlanta: Alabama, the District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and Southern West Virginia.

(2) NAVINFO Boston: Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

(3) NAVINFO Chicago: Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Northern West Virginia.

(4) NAVINFO Dallas: Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

(5) NAVINFO Los Angeles: Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(6) NAVINFO New York: Connecticut, Delaware, New Jersey, New York, and Pennsylvania.

(g) The Navy Public Affairs Centers (NAVPACENs) are located in Norfolk and San Diego. The centers have a primary mission of producing Navy stories for dissemination to the media through normal information channels.

(1) The following tasks are included among the functions of the NAVPACENs.

(i) Produce written, audio and photographic feature public information material about fleet and shore personnel, units and activities, as coordinated with and approved for policy and concept by the respective fleet and shore commander concerned.

(ii) Serve as public affairs emergency reaction teams/resource personnel responsive to the requirements of the CNO and CHINFO, and when feasible and appropriate and as approved by CNO or CHINFO, serve as public affairs emergency reaction teams/resource personnel in support of Fleet Commanders.

(iii) Develop feature material to support the long range goals and the immediate priorities of the Navy. Direct liaison is authorized with the Navy Recruiting Command, Recruiting Areas, Recruiting Districts, and other Commanders as appropriate to achieve this function.

(iv) Perform such other tasks as may be assigned by the Chief of Information.

(2) NAVPACENs will have no public affairs news media responsibilities which conflict with the basic public affairs responsibilities of Fleet Commanders-in-Chief. Specifically, NAVPACENs are excluded from responding to news media queries, releasing news information, arranging news media embarkations, or any other day-to-day news media services concerning the respective fleets. These responsibilities remain with the Fleet Commander.

(3) NAVPACENs have no direct responsibility or authority for community relations or internal relations and shall defer in these areas to the cognizant Naval District Commandant.

(4) Direct liaison with Fleet Commanders-in-Chief and NAVINFOs is appropriate and authorized. As approved by the Fleet CINCs, direct liaison with forces afloat and shore activities under the Fleet CINCs is appropriate.

(5) NAVPACENs will carry out their mission and functions in such a manner as not to interfere with the public affairs responsibilities of the District Commandants.

[44 FR 6389, Feb. 1, 1979]

§ 705.3 [Reserved]

§ 705.4 Communication directly with private organizations and individuals.

(a) Questions from the public and requests from groups or individuals for pamphlets, photos, biographies, historical matter, etc., must be promptly answered. (32 CFR Part 701, Subparts A-D refers.)

(b) Assistance within the command's capabilities should (and in some cases, must) be given. Where an established channel for obtaining the item exists, such as a publication stocked by the Superintendent of Documents (Government Printing Office), or photos, as explained in the subparagraph below, the requester may be directed to it. Under some circumstances, a charge may be made. (Consult Part 701 or the command's Freedom of Information authority for details.) If a lengthy search, beyond the convenient manpower resources of the command, would be required, the requester may be offered the opportunity of examining the material at the command instead of copies being made.

(c) If a request is refused, the reason must be fully and courteously ex-

plained, as required by Part 701 of this chapter.

(d) Copies of released U.S. Navy photos may be purchased by the general public.

(1) Photos made within the last 10 years may be purchased from the Naval Photographic Center. Information on the conditions of sale can be obtained by writing to the Commanding Officer, Naval Photographic Center, Naval Station, Washington, D.C. 20390.

(2) Photos made more than 10 years prior to the current date may be purchased from the National Archives. Details are available from: Audio-Visual Branch National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.5 Taking of photos on board naval ships, aircraft and installations by members of the general public.

(a) Visitors will not be allowed to take photographic equipment on board a naval ship or aircraft or into a naval activity or to take photographs within a naval jurisdiction unless specially authorized by the officer in command or higher authority.

(b) Guests of the Navy who wish to take photos within naval jurisdictions will be advised of areas where photography is permitted. An escort will be assigned to assure that security is maintained, unless photography is permitted throughout the ship, aircraft or installation, or the areas in which it is not permitted are appropriately guarded or secured.

(c) If there is reason to believe that film exposed by a visitor or media photographer contains classified information, the film will be processed under Navy jurisdiction.

(1) Classified photos, if any, will be retained. All unclassified film will be returned to the owner.

(2) When film exposed by civilian visitors or media representatives in sensitive areas is beyond the capability of the local command to process, it may be forwarded to the Commanding Officer, Naval Photographic Center, for processing. Any special processing instructions should be sent with the film.

§ 705.6 Releasing public information material to the media.

(a) Methods of releasing information:

(1) Release at the seat of government and/or as approved by the Assistant Secretary of Defense (Public Affairs).

(i) Overall responsibility for release of information rests with the Assistant Secretary of Defense (Public Affairs). The Chief of Information is responsible for coordinating with him releases of national and international interest (and in the case of audiovisual material of regional interest) and for arranging for local release of such material if considered appropriate by OASD(PA). Information of the above types and also information proposed for release at the seat of government, with the exception of "spot news," as described in paragraph (b) of this section, following.

(2) Releases by local commands:

(i) News of purely local interest may be released by the command concerned. Higher and coordinating authorities (such as the District Commandant) will be informed, when appropriate, that the release has been made.

(ii) News of national or other wide interest may be released by a local command under the following circumstances:

(A) The Assistant Secretary of Defense (Public Affairs), having approved a release, directs that it be issued by the command concerned.

(B) An event of immediate and urgent news interest, such as a disasterous accident, occurs at the command, and emergency announcements must be made as delay in issuing information would be against the best interests of the Navy. The officer in command will make a "spot news" release of all appropriate information considered releasable.

(*1*) Copies of spot news releases made (or a description if the announcement is made orally) will be forwarded promptly to the Chief of Information.

(2) If the situation is considered critical, the spot news release will be forwarded by telephone or message.

(b) Means through which information is released to media:

(1) Navy oriented information material (written, taped, motion picture, still photo) is regularly released to all media presumed to be interested.

(2) Similar material is provided in response to query from a news media representative. The material may be produced by the Navy, or the newsman may be assisted in researching, filming, etc. himself.

(3) Exclusive releases:

(i) Information concerning naval activities may be provided on an exclusive basis only when a specific request or inquiry is received from one news media representative for material not requested by other media.

(ii) In such cases, and assuming that the information is properly releasable, the following rules will apply:

(A) If prior to the time information is given to the newsman making the original inquiry or request substantially similar inquiries or requests are received from other newsmen, the first inquirer will be so informed, and subsequent inquirers will be advised that a prior request has been received. None of the inquirers will be told the identity of the individuals or media who have placed these similar inquiries.

(B) If not more than three similar requests are received, the information will be provided simultaneously to each inquirer.

(C) If more than three requests for substantially the same information have been received before any are answered, inquirers will be advised as soon as possible that the information cannot be given on an exclusive or limited basis, and a general release covering the subject will be issued to all media.

(4) News conferences:

(i) A news conference is held when a command has something specific to announce to the press that cannot be handled in a news release or by phone call. A news conference should not be called just to get together with the press. A request from the press is also a reason for conducting a news conference. Special events, significant operations or serious accidents are frequent reasons for calling news conferences. If requested, spokesmen may be made available to the press for questions without specific subject matter in mind, but the press should be clearly informed of the nature of this meeting. Technically, this is not considered a news conference.

(ii) When a news conference is held, it is essential that all interested media be invited to attend.

(iii) A record of what is said should be kept. Ideally, the news conference should be tape recorded and a public affairs officer should be present.

(iv) Official spokesmen will be prepared to answer questions in a frank and candid manner. If the answer would compromise military security, the inquirer should be so advised. If the answer is not known to the spokesman, he should say so and add that the matter will be checked and any available unclassified information provided later.

(v) Newsmen are not normally asked to submit their questions in advance. If this is considered advisable, as in cases where highly technical answers may be required, the answers are prepared in advance and given to all attending newsmen (not just the questioner) at the news conference.

(5) Interviews. These are similar to news conferences except that they involve a single newsman (who has usually requested the interview) and a single Navy spokesman.

(i) Required procedures are essentially the same as for news conferences. However, a public affairs officer should be present only if desired by the person being interviewed. The interview may be taped, if the newsman agrees.

(ii) Without penalizing initiative displayed by a newsman in asking pertinent questions, care should be exercised by the naval spokesman not to make a major revelation of news material to a single media outlet in the course of a routine interview.

(iii) If major areas of difficulty arise in the interview, the Chief of Information should be notified of them.

(6) Background briefings; "Not for attribution"; or "Off the record."

(i) Since there is a possibility or risk of a misunderstanding arising in these briefings, it is important that all concerned understand and agree to the ground rules.

(ii) In general, information will not be made public unless it can be openly attributed to the Navy and disseminated without reservation. Occasionally, a backgrounder may be helpful. An example is a briefing of embarked newsmen in advance of an operation, providing information which may not be reported until the operation is over. The purpose is to help the newsmen understand the operation while it is taking place.

§ 705.7 Radio and television.

(a) Navy relationships with radio and TV representatives are of two types:

(1) Dissemination to them of Navy produced tapes, photos, films, etc. (This is discussed in more detail in § 705.17).

(2) Cooperation with them when they produce a program on a Navy subject. This is discussed in the paragraph following:

(b) Requirement for approval by higher authority.

(1) Commanding officers may:

(i) Release audiovisual material which is spot news, as defined in § 705.6(a)(2)(ii) preceding, or is of purely local interest.

(ii) Participate in local community audiovisual projects of benefit to the Department of Defense or in the national interest.

(iii) Approve one-time, one-station participation by personnel of their commands (as individuals) in programs of purely local interest.

(2) All other audiovisual material originated by the Department of the Navy or requiring Navy cooperation must be approved by the Chief of Information, who will effect the necessary coordination and/or approval of the Assistant Secretary of Defense (Public Affairs).

(i) Requests for assistance from nongovernmental audiovisual media will be forwarded, with the maximum available details and an evaluation of the request, through the chain of command to the Chief of Information.

(ii) No direct coordination or contact between local naval commands and the Assistant Secretary of Defense (PA) is authorized unless specifically provided for by separate directives or correspondence.

(c) Navy cooperation in productions by audiovisual media representatives (nongovernment).

(1) The production or project must:

(i) Be consistent with the goals and aims of the Department of Defense and/or be in the national interest.

(ii) Portray military operation, historical incidents, persons and places, in such a manner as to give a true portrayal and interpretation of military life.

(iii) Comply with accepted standards of dignity and propriety in the industry.

(2) There will be no deviation from established safety standards.

(3) Operational readiness shall not be impaired.

(4) Official activities of military personnel assisting the production must be within the scope of normal military activities. Exceptions to this policy will be made only in unusual circumstances.

(5) Diversion of ships, equipment, personnel and material resources from normal military locations or military operations will not normally be authorized for filming. Exceptions to such policy must be authorized by the Assistant Secretary of Defense (Public Affairs), through the Chief of Information.

(i) The production company concerned must reimburse the government for any extra expense involved. A strict accounting of the additional expenses incurred and charged to the production company must be maintained by the designated project officer. A copy of this accounting will be forwarded to the Chief of Information.

(6) Naval material and personnel will not be employed in such a manner as to compete with commercial and private enterprise. In this regard, any person or agency requesting their use will furnish a noncompetitive certification.

(7) Additional details on procedures will be found in DOD Instruction 5410.16.

(8) In addition to cooperation requested by the media, commands will be alert to the advantages of providing Navy programming and/or encouraging participation by Navy personnel in local radio and TV programming. Examples are community forums, local talent shows, educational and religious programs, children's shows, sports programs, etc.

(d) Participation by individual Navy personnel on radio or TV programs:

(1) In general, such participation is encouraged if it is:

(i) Dignified and considered in the interests of the Navy.

(ii) Compatible with operational commitments.

(iii) Not in competition with the regular employment of professional performers.

(2) The public affairs officer will screen requests for such appearances for members of his command to see that the programs are in good taste, and that neither the Navy nor its personnel are exposed to embarrassment for the sake of entertainment.

(3) Approval of participation by Navy individuals:

(i) Approval is not required for personnel attending audience participation broadcasts if they are selected at random from the audience.

(ii) One-time, one-station participation of purely local interest may be approved by the officer in command concerned.

(iii) If participation will be on a network (defined as more than one station, even if local) of if the same person or program is requested by two or more unrelated stations, approval by the Chief of Information must be obtained even if the show is of local interest only.

(e) Use of official footage:

(1) Use of official U.S. Navy stock film footage on TV broadcasts is not authorized without approval and clearance by the Chief of Information and the Department of Defense.

(2) Use of Navy public information motion pictures cleared for TV is authorized and encouraged except that such films may be used on subscription or pay TV only when offered to the viewers at no cost.

(3) Navy films will not be cut or portions duplicated for TV use in lieu of stock footage without prior approval by the Chief of Information.

(f) Music clearance. The Navy assumes no responsibility for clearance of music used on Navy recordings, transcriptions, or films not specially produced or authorized for radio or TV broadcast.

(g) Disclaimers. A disclaimer is not necessary if a product is advertised on a program in which the Navy participates, but there must be no stated or implied endorsement of it by the Navy or by naval personnel appearing on the program.

(h) Requests for courtesy prints of commercial television programs:

(1) Requests will not be made directly to the producer or network concerned, but will be forwarded to the Chief of Information by the Navy requester.

(2) These courtesy prints will be exhibited only under circumstances which cannot be construed as competitive with commercial ventures.

§ 705.8 Motion pictures.

(a) The rules and procedures given in the preceding for TV will also apply to cooperation with commercial motion picture producers.

(b) The Navy assists in the production of commercial, privately financed, nontheatrical motion pictures of institutional or of educational value to the public. They Navy will not:

(1) Solicit their production.

(2) Provide lists of subjects the Navy considers "desirable."

(3) State that the Navy will use a commercially produced film.

(4) Imply endorsement of a product.

(5) Permit the use of official Navy seals.

(c) Navy assistance to motion pictures and all other audio-visual products produced by Navy contractors will be subject to the same rules and procedures that apply to other non-government producers. Audio-visual products produced by Navy contractors, with or without Navy assistance, will be submitted to the Chief of Information via

the appropriate Navy headquarters activity for coordination with the Assistant Secretary of Defense (Public Affairs) for clearance for public release. They will be accompained by five copies of the script and a statement from the producer that costs were paid from corporate (vice contract) funds.

(d) When a commercial film which has been produced with Navy cooperation is screened in a community, local commands can provide Navy exhibits for display in theater lobbies, coordinate displays of recruiting material, and arrange for personal appearances of Department of Defense and Department of the Navy military and civilian personnel, provided such cooperation is approved by the Chief of Information and the Assistant Secretary of Defense (Public Affairs).

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.9 Availability of motion pictures to external audiences.

(a) *Public access.* Navy and Marine Corps general motion pictures and motion picture projects not previously cleared for public exhibition will require clearance by the Chief of Information or the Marine Corps Director of Information, as appropriate, prior to public viewing. Concurrent review of legal rights and instruments associated with the production will be carried out by Patent Counsel, Naval Air Systems Command (AIR-OOP). Cleared motion pictures may also be made available for free loan as determined by the individual services. In addition, cleared motion pictures may be provided for rent or sale through the National Audio-Visual Center, National Archives and Records Service (GSA), Washington, DC 20409.

(b) *Foreign military training.* Motion pictures from the Navy inventory may be made available for foreign military training programs on approval by the Chief of Naval Operations. Classified motion pictures selected for such use will also require a security review by the Chief of Naval Operations.

§ 705.10 Still photography.

(a) Policy and procedures on taking photos by the general public, given in § 705.5 apply also to media representatives.

(b) Basic policy and procedures for still photos are set forth in the Manual of Naval Photography, OPNAVINST 3150.6D.

(c) Authority to forbid photography:

(1) On Navy property, the officer in command may forbid the taking of photographs and may confiscate film, reviewing it if it is suspected that classified material has been photographed. In such cases, all unclassified photos will be returned promptly to the photographer.

(2) Navy personnel have no authority to confiscate film off Navy property. If, as in an accident, classified equipment is exposed which cannot be removed or covered, Navy representatives will ask news media photographers not to photograph it and will inform them of 18 U.S.C. 793(e), 795, 797, which makes it a criminal offense to photograph classified material. Navy personnel will not use force if media photographers refuse to cooperate, but will instead seek the assistance of appropriate civil authorities and/or the photographer's superior in recovering film or photographs presumed to be of classified nature.

(3) If media photographers are uncooperative in regard to protection of classified material, an account of the matter will be forwarded to the Chief of Information.

(d) Release of photographs:

(1) Most unclassified photographs of interest to the public may be released to news media. However, the rights of individuals photographed and special constraints such as those described in section 0403 of the Public Affairs Regulations must be taken into consideration before a decision is made to release a photograph. In addition, photos which might be harmful to recruiting or otherwise not be in the Navy's best interests will not be used unless this failure to release them constitutes suppression of legitimate news.

(2) Photographs of strictly local interest can be made available by the

command to local media without being submitted to review by higher authority.

(3) If a feature type photo released locally is considered of possible interest elsewhere, because of its human interest or artistic merit, a single print should be forwarded to the Chief of Information, together with a notation of the distribution made.

(4) Photographs of national interest:

(i) "Spot news" photos may be released by a District Commandant or Fleet or Force Commander.

(ii) If a photo has been released by a local command to national news media:

(A) The original negative or transparency will be forwarded by the fastest available means to the Commanding Officer, Naval Photographic Center, Naval Station, Washington, D.C. 20390. Such forwarding will be in accordance with the Manual of Naval Photography, par. 0445, subparagraphs 3 and 4.

(B) One print, a copy of the letter of transmittal, and the distribution list will be forwarded to the Chief of Information.

(C) Navy units with a Unified Command will forward the photos through Unified Command channels.

(D) All other commands will forward the photos to the Chief of Information who will effect coordination with the Office of the Assistant Secretary of Defense (Public Affairs) and, if necessary, arrange for security review.

(iii) Photography of research activities is normally considered to be of national interest.

(iv) Still photographs of national news interest may be forwarded, unprocessed, for release by the Chief of Information by any command not subject to the authority of a Unified or Specified Commander. Such forwarding will be in accordance with paragraph 0445, subparagraph 3, of the Manual of Naval Photography. All available caption material will be forwarded with this unprocessed photography.

§ 705.11 Supplying photographs and services to other than Navy and Marine Corps.

(a) To avoid competition with civilian photographic organizations, naval aircraft will not be used to take photographs for, nor will photographs or mosaic maps be provided to any individuals, corporations, or agencies other than departments or agencies of the federal government, without specific permission from the Chief of Naval Operations.

(b) In the case of natural catastrophe, or other circumstances where prompt action is required, the senior officer present may authorize a departure from the preceding paragraph. In all such cases, a report of the circumstances will be made to the Chief of Naval Operations.

(c) This policy does not preclude releases to the media, news companies, and others in accordance with established procedures, or the sale of released photographs to private agencies or individuals under existing Department of Defense regulations and Part 701, Subparts A-D, Availability to the public of Department of the Navy Information and Records. Normally, requests by individuals for still photographs and motion picture photography for private use are forwarded to the Commanding Officer, Naval Photographic Center, Naval Station, Washington, DC 20390, for action. Procedures for the collection or authority for waiver of fees for service and material provided are set forth in Volume III, NAVCOMPT Manual, and Part 701, Subparts A-D.

(d) Navy aerial photography released for sale to the public is transferred to the United States Department of the Interior. Inquirers regarding the purchase of this photography should be directed to Chief, Map Information Office, Geological Survey, Department of the Interior, Washington, DC 20025.

(e) Navy training films suitable for sale to the public are transferred to the National Audio-Visual Center, National Archives and Records Service, General Services Administration, Washington, DC 20408. Inquires regarding the sale of Navy training films

should be addressed to the National Audio-Visual Center.

(f) This policy does not preclude releases to contractors and others properly engaged in the conduct of the Navy's business. However, when services are performed for other agencies of the government, and under certain conditions, for other military departments, the Navy Comptroller Manual prescribes that such are subject to reimbursement.

(g) All private inquiries from foreign nationals should be returned, advising the addressee to contact his local U.S. Information Service officer for the desired materials.

§ 705.12 Print media.

Requests for reprints of items published in national media will be addressed to the Chief of Information. Commands will be careful not to reproduce on their own authority any copyrighted material without advance permission from the copyright holder.

§ 705.13 Commercial advertising.

(a) The Navy encourages cooperation with advertisers. However, the layout, artwork and text of the proposed advertisement must be submitted to the Chief of Information for review and for clearance by other appropriate authorities.

(b) Requests from commercial enterprises (including those with Navy contracts) for use of Navy personnel, facilities, equipment or supplies for advertising purposes must be referred to the Chief of Information.

(c) Official Navy photos which have been cleared and are released for open publication may be furnished for commercial advertising, if properly identified and captioned. No photos will be taken exclusively for the use of an advertiser.

(d) Navy cooperation in commercial advertising, publicity and other promotional activities will be based on the following requirements.

(1) It must be in accordance with the provisions of 32 CFR Part 721.

(2) It must be in good taste and not reflect discredit on the Navy or the U.S. Government. Statements made must be matters of fact, without misleading information or other objectionable features.

(3) It must not indicate that a product is used by the Navy to the exclusion of similar products offered by other manufacturers or appear to endorse or selectively benefit or favor (directly or indirectly) any private individual, sect, fraternal organization, commercial venture or political group, or be associated with solicitation of votes in a political election. It will not infer Navy responsibility for the accuracy of the advertiser's claims or for his compliance with laws protecting the rights of privacy of military personnel whose photographs, names or statements appear in the advertisement. It will neither indicate that a product has undergone Navy tests nor disclose data from any Navy tests which may have been made.

(4) It may not promote the use of tobacco or alcohol.

(e) Use of uniforms and naval insignias. These may be used provided it is done in a dignified manner.

(f) Use of Naval personnel:

(1) Personnel may receive no compensation.

(2) Personnel will not be inconvenienced or have their training or normal duties interrupted.

(3) Written consent from the person concerned must be obtained before a photo may be used.

(4) Navy civilians and military personnel on active duty may not use their position titles or ranks in connection with any commercial enterprise or endorsement of a commercial product. (Retired personnel and Reserves not on active duty may use their military titles in connection with commercial enterprises if this does not give rise to the appearance of sponsorship of the enterprise by the Navy or Department or in any way reflect discredit upon them.)

(5) Testimonials from naval personnel are not banned, but the person giving the testimonial must not be specifically identified.

(i) The use of name, initials, rank or rate of Navy personnel appearing in testimonial advertising is not permitted, but such expressions as, "says a Navy chief," may be used.

(ii) Care will be taken to ensure that testimonials from Navy personnel are presented in such a way as to make clear that the views expressed are those of the individual and not of the Department of the Navy.

§ 705.14 Embarkation of media representatives.

(a) *General.* (1) Although this paragraph applies primarily to embarkation in ships, provisions which are applicable to embarkation on aircraft or visits to shore installations apply also to those situations.

(2) See also § 705.37 on transportation of non-Navy civilians.

(b) *Invitations to embark.* (1) Invitations should be extended as far in advance as possible and inclusive information on the following should be provided:

(i) Type, scope and duration of operation or cruise.

(ii) Communications, methods of press transmission, and charges, if any.

(iii) Transportation arrangements.

(iv) Approximate cost of meals and/or quarters, and the statement that the newsman will be expected to pay for these and other personal expenses incurred.

(2) It should be made clear to the newsman that there may be limits on movement from one participating unit to another. If helicopters or highline transfers are to be used, their limitations and hazards should be explained.

(3) On operations where security is critical, embarkation of newsmen may be made contingent to their agreement to submit copy for security review. Under such circumstances, the reason for the review will be made clear prior to embarkation, and every effort will be made to avoid any interpretation of such review as "censorship" or interference with freedom of the press.

(c) *Arrangements aboard ship.* (1) Where appropriate, a briefing should be held at the earliest convenient time after embarkation at which newsmen may meet the commanding officer and other key personnel and guests and at which previously supplied information is reviewed.

(2) If feasible, an escort officer will be assigned to each newsman (or group of newsmen having similar requirements).

(3) It should be reported in the ship's newspaper (and on radio and closed-circuit TV, if any) that newsmen will be embarked, giving their names and the media they represent.

(4) If a correspondent is interested in home town material, personnel from his area should be contacted in advance, if possible, to determine if and when they would be available for interviews and photos.

(5) Representatives of press associations and radio and TV networks will be embarked in the Exercise Commander's flagship or the Exercise Control ship, when possible. This ship should also control the ship-to-shore press radio and teletype (RATT).

(6) When more than one representative from the same medium is embarked, an attempt should be made to have them located at separate vantage points.

(d) Communications:

(1) Every effort will be made to provide suitable communication facilities for newsmen embarked (including equipment and personnel, if feasible).

(2) All persons embarked with permission of proper authority and accredited as correspondents are eligible to file press traffic, as authorized by the procedures set forth in Naval Telecommunication Procedures (NTP-9), "Commercial Communications."

(3) Navy radio or wire transmission facilities, where available, may be made available to news media (including accredited civilian photographers) when operational requirements permit, in accordance with instructions set forth by the Director of Naval Communications. This includes making live broadcasts or telecasts. (A live network broadcast or telecast must, however, be approved by the Chief of Information.)

(4) Messages and instructions from editors and station managers to embarked newsmen will be handled as press traffic, as authorized in Naval Telecommunication Procedures (NTP-9).

(5) Stations receiving press circuits will be authorized to receipt for press

traffic without asking for time-consuming "repeats."

(6) Under normal circumstances, press copy will be transmitted on a first-come, first-served basis; however, newsmen will be informed that the prerogative of limiting the amount to be filed during any one period rests with the Exercise Commander.

(7) If it becomes necessary for operational reasons for newsmen to pool copy, such messages shall be filed as "multiple address messages" or book messages, as appropriate, or when requested by the newsmen concerned.

(8) If the locale of the exercise permits newsfilm and press mail to be flown ashore, flights should be scheduled on a high priority basis to connect with scheduled commercial air traffic. Operational aircraft as well as scheduled government air flights should be considered for delivery of television news film, radio tapes and photography to the nearest commercial communications facility.

(e) *Voluntary submission of material by a newsman for security review.* When a review is not required but is sought by the newsman, no attempt will be made to delete or change any material, whether or not it appears critical of the Navy or of naval personnel. If any classified information is included, the newsman will be asked to delete it. In addition, his attention will be drawn to any inaccurate or possibly misleading statements.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.15 Employment of Navy personnel as correspondents or staff members of civilian news media.

(a) A member of the naval service on active duty or Navy civilian may act as correspondent for a news periodical or service, radio or TV station or network, or may work part-time for such an organization. The Secretary of the Navy will, however, be immediately informed, via the Chief of Information.

(1) See section 0307 (par. 5), section 0308 (par. 4), and section 0309 (par. 3) of the Navy Public Affairs Regulations for regulations referring to personnel assigned to public affairs staffs receiving compensation for such work.

(2) In time of war, only personnel assigned to public affairs billets and such other personnel as the Secretary of the Navy may authorize can act as correspondents for civilian media.

(b) Military personnel on active duty and Navy civilians may not serve on the staff of a "civilian enterprise" newspaper published for personnel of a Navy installation or activity.

§ 705.16 Navy produced public information material.

(a) *Still photo*—(1) *General.* (i) The policy and procedures given for media produced still photos in § 705.10, apply to Navy produced photos.

(ii) The Office of Information does not issue, nor have funds available for the purchases of, any photographic equipment or supplies for Navy commands. Details on the establishment of authorized laboratories and acquisition of equipment and supplies are given in the Manual of Navy Photography (OPNAVINST 3150.6D).

(2) *Photographic coverage of command events.* (i) If more than two photographers are required to cover a public event, consideration should be given to having them wear appropriate civilian attire.

(ii) Personnel in uniform who are amateur photographers and who are attending the event as spectators will not be discouraged from taking photos.

(3) *Unofficial photos taken by Navy personnel.* (i) The following regulations apply to Navy civilian employees and to Navy personnel in transit through a command, as well as to active duty personnel assigned to the command.

(ii) Personal cameras and related equipment are permitted on Navy ships, aircraft and stations at the discretion of the officer in command.

(iii) An officer in command may screen all photos taken by naval personnel with personal cameras within the jurisdiction of the command to protect classified information or to acquire photos for official use, including public affairs. Photographs taken by bystanders at times of accident, combat, or similar significant events can be valuable for preparation of offi-

cial report and public release. They should be collected for screening and review as expeditiously as possible.

(iv) Amateur photographers should also be encouraged to volunteer the use of interesting or significant photos for public affairs use.

(v) Photos made by naval personnel, with either personal cameras and film, Navy equipment and film, or any combination thereof, may be designated "Official Navy Photo" if it is considered in the best interests of the Navy.

(A) All precautions will be taken to protect such film from loss or damage, and all unclassified personal photos not designated as "official" will be returned to the owner immediately after review.

(B) When a photo taken by an individual who is not an official photographer is selected for public affairs release:

(*1*) The photographer will receive credit for his work in the same manner as an official photographer.

(*2*) The original negative or transparency will be retained and assigned an official file number. It will then be handled like any other official Navy photograph.

(*3*) At least one duplicate negative or transparency of each unclassified personal photo which has been designated as "official" will be prepared and delivered to the photographer. A black-and-white print may also be prepared for the photographer's personal use.

(b) *Audiovisual.* (1) The Chief of Information releases TV featurettes directly to local TV stations and the Office of Information's Branch Offices (NAV INFO's). After such featurettes have been cleared for public release by the Assistant Secretary of Defense (Public Affairs).

(2) The Assistant Secretary of Defense (PA) must approve, prior to commitment of funds, the initiation of Navy audiovisual productions intended for public release.

(3) Motion picture film.

(i) Film of major news value will be forwarded immediately, unprocessed, to the Commanding Officer, U.S. Naval Photographic Center. The package should be labeled as follows:

NEWS FILM—DO NOT DELAY

Commanding Officer, U.S. Naval Photographic Center (ATTN: CHINFO Liaison), Washington, DC 20374.

NEWS FILM—DO NOT DELAY

The Commanding Officer of the Naval Photographic Center will be advised (with an information copy to the Chief of Information) of its forwarding, the subject, type and amount of footage, method of delivery, and estimated time of arrival in Washington.

(ii) The original negative of motion picture photography of feature value (photography which will not lose its timeliness over a reasonable length of time) will be forwarded to the Naval Photographic Center, and a copy of the forwarding letter will be sent to the Chief of Information.

(c) FLEET HOME TOWN NEWS CENTER (FHTNC).

(1) All public affairs officers will assure that appropirate news and photo releases on personnel of their commands are regularly sent to the Fleet Home Town News Center.

(2) Procedures, requirements and formats are contained in CHINFOINST 5724.1.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.17 Participation guidelines.

(a) The provisions of this section refer to participation by naval personnel and use of Navy facilities and material in events sponsored by nongovernment organizations except where otherwise stated.

(b) In accordance with the established responsibilities of local officers in command, these officers will continue to determine whether facilities, equipment and personnel within their cognizance may be provided for such programs (except in the Washington, D.C. area where the Assistant Secretary of Defense (Public Affairs) is the authorizing authority).

(c) Officers in command will ensure that participation is appropriate in scope and type, and is limited to those occasions which are: In keeping with the dignity of the Department of the Navy, in good taste and in conformance with the provisions of Part 721 of

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this chapter. The national, regional, state or local significance of the event and the agency sponsoring the event will be used as guides in determining the scope and type of Navy participation to be authorized.

(d) Participation in community relations programs is authorized and encouraged to accomplish the aims and purposes as set forth in § 705.18 (following). Where mutually beneficial to the Department of Defense and the public, support authorized and provided is always subject to operational considerations, availability of requested support and the policy guidance provided herein.

(e) Military personnel, facilities, and materiel may be used to support nongovernment public affairs programs when:

(1) The use of such facilities, equipment and personnel will not interfere with the military mission or the training or operational commmitments of the command.

(2) Such programs are sponsored by responsible organizations.

(3) Such programs are known to be nonpartisan in character, and there is no reason to believe that the views to be expressed by the participants will be contrary to established national policy.

(f) The sponsoring organizations or groups will be clearly identified in all cases where naval personnel participate as speakers, or military support is furnished.

(g) Public affairs programs sponsored by civilian organizations will not be cosponsored by a naval command unless expressly authorized by the Chief of Information.

(h) Participation will not normally be authorized in public events when the presence of military participants deprives civilians of employment. Officers in command will screen all requests for use of material and personnel in Navy-sponsored social functions held off military installations.

(i) Navy participation and cooperation must not directly or indirectly endorse, or selectively benefit, or appear to endorse, benefit or favor, any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, fraternal, or political organization, or commercial venture, or be associated with the solicitation of votes in a political election.

(1) Providing use of government facilities, such as transportation, housing, or messing, at government expense to private groups is normally interpreted as a selective benefit or favor and is not authorized as part of a community relations program. Therefore, such provisions are normally not authorized as part of a community relations program, even though certain uses of facilities may be authorized under directives on domestic action or other programs.

(2) The above does not bar private groups from providing entertainment on base. However, the appearance must be for entertainment and not for fund-raising, or any political or promotional purpose.

(j) Community relations programs must always be conducted in a manner free from any discrimination because of race, creed, color, national origin, or sex.

(1) Navy participation in a public event is not authorized if admission, seating and other accommodations and facilities are restricted in a discriminatory manner.

(2) Exceptions for participation may be made under certain circumstances for an ethnic or ideological group when they do not entertain any purpose of discriminating against any other group. Any such exceptions must be referred to the Chief of Information for consideration.

(3) Support to nationally recognized veterans' organizations is authorized when the participation is in support of positive programs which are not in themselves discriminatory.

(4) Navy support to nonpublic school activities is authorized when the participation is clearly in support of educational programs or Navy recruiting.

(5) Commands should ensure minority participation in all community relations activities and events, as appropriate. This includes but is not limited to the following:

(i) Ensure that the minority community is aware of the procedure for obtaining Navy support for community events and that they are appraised of

the use of Navy demonstration teams, units, and speakers.

(ii) Encourage Navy involvement in, and attention to, local minority community events.

(iii) Continue to cultivate a rapport with key members of all minority communities.

(k) Participation is not authorized if there is fund raising of any type connected with the event, except as provided for in § 705.34.

(l) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit, or exhibit.

(1) When admission is charged, the Armed Forces activity must not be the sole or primary attraction.

(2) A general admission charge need not be considered prohibitory to Navy participation, but no specific or additional charge may be made because of Navy participation.

(3) Participation shall be incidental to the event except for programs of a patriotic nature, celebration of national holidays, or events which are open to the general public at no charge for admission.

(4) The provisions of this paragraph do not apply to the Navy's Blue Angel Flight Demonstration Team or to the Navy Band and other special bands engaged in authorized concert tours conducted at no additional cost to the government.

(m) Some participation in or support of commercially sponsored programs on audio or visual media is allowable. See §§ 705.7 and 705.8.

(n) Some participation which supports commercial advertising, publicity and promotional activities or events is allowable. See section 0405, par. 3 of the Navy Public Affairs Regulations.

(o) Navy speakers may be provided for certain events at which other forms of Navy participation may not be appropriate. See section 0604, par. 8 of the Navy Public Affairs Regulations.

(p) When participation is in the mutual interest of the Navy and the sponsor of the event, participation will be authorized at no additional cost to the government. Additional costs to the government (travel and transportation of military personnel, meals and quarters, or standard per diem allowances, etc.) will be borne by the sponsor.

(q) Department of Defense policy prohibits payment by the Armed Forces for rental of exhibit space, utilities, or janitorial costs. Other exceptions may be given under unusual circumstances.

(r) Navy participation in professional sports events and post-season bowl games will frequently be authorized at no additional cost to the government, will emphasize Joint Service activity when possible, and must support recruiting programs. Chief of Information approval is required.

(s) Navy participation in public events shall be authorized only when it can be reasonably expected to bring credit to the individuals involved and to the Armed Forces and their recruiting objectives. Naval personnel will not be used in such capacities as ushers, guards, parking lot attendants, runner or messengers, baggage handlers or for crowd control, or in any installations.

(t) Maximum advantage of recruiting potential will be taken at appropriate events for which Navy participation has been authorized.

(u) Navy support will not normally be authorized for commercially-oriented events such as shopping center promotions, Christmas parades, and other such events clearly sponsored by, or conducted for the benefit of commercial interests. However, this policy does not preclude participation of Navy recruiting personnel and their organic equipment, materials and exhibits so long as their participation is not used to stimulate sales or increase the flow of business traffic or to give that appearance. Requests for exceptions will be considered on a case-by-case basis by the Chief of Information.

(v) Questions as to appropriateness of Navy participation, or as to existing Navy and OASD (PA) policy, may be referred to the Chief of Information.

(w) Procedures for requesting participation are addressed in § 705.21.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.18 Authority and coordination.

(a) Each naval command will coordinate its community relations program with the senior authority having responsibility for community relations in its area (District Commandant, Unified Commander, or other).

(b) Within policy limitations outlined in this section, the command receiving a request for Navy participation, and processing the required resources, has the authority to process the request and provide the support requested.

(c) Requests for support exceeding local capability, or requiring approval from higher authority, or requiring an exception to policy will be referred as directed in § 705.21 for determination.

(d) The Assistant Secretary of Defense (Public Affairs) has the overall responsibility for the Department of Defense community relations program. Civilian sponsors should be advised to address requests for approval of the following types of programs directly to the Director of Community Relations, Office of the Assistant Secretary of Defense (Public Affairs), Pentagon, Washington, D.C. 20301:

(1) National and international events, including conventions, except those taking place in overseas areas which are primarily of internal concern to Unified Commanders.

(2) Events outside the United States which have an interest and impact extending beyond the Unified Command areas, or which require assistance from outside the command area.

(3) Public events in the Washington, D.C. area.

(4) Aerial, parachute, or simulated tactical demonstrations held in the public domain, except those held in areas assigned to overseas Unified Commands.

(5) Aerial reviews on military installations within the United States if the review involves more than one Service.

(6) Programmed national sports, professional athletic events, formal international competitions, and contests between a Navy and professional team in the public domain. See section 0605, par. 18 of the Navy Public Affairs Regulations.

(7) Performing Navy units appearing on regional or national television.

(8) Overall planning for Armed Forces Day (not including local activities).

(9) Granting exceptions to policy.

(e) Overseas, Unified Commanders are designated to act for and on behalf of the Secretary of Defense in implementing community relations programs within their command areas and in granting any exceptions to policy or regulations. This authority may be delegated.

(1) Policy, direction and guidance for Unified Command community relations programs are provided to Navy components of these commands by the Unified Commander concerned.

(2) Authority of the Commander-in-Chief, Pacific extends to planning and execution of community relations programs in Alaska and Hawaii. Participation in events held in Alaska and Hawaii will be governed by the same principles as policies applicable to other states.

(3) Community relations programs and events taking place within the United States which have an effect on a Unified or Specified Command as a whole, or are otherwise of significant concern to the Unified Command, require complete coordination through appropriate channels between the Unified Command and naval activities concerned.

(4) Unified Commanders overseas requiring Navy support for a community reltaions program or participation in a public event should coordinate their requirements with the appropriate Navy component command.

(f) The Secretary of the Navy will plan and execute Navy community relations programs and approve Navy participation in public events not otherwise reserved or assigned to the Secretary of Defense. This authority may be delegated.

§ 705.19 Financing.

(a) The financial requirements for community relations purposes will be kept to the minimum necessary to accomplish Department of Defense objectives.

(b) Costs of participation will normally be at government expense for the following types of events and pro-

grams when they are in the primary interest of the Department of Defense:

(1) Public observances of national holidays.

(2) Official ceremonies and functions.

(3) Speaking engagements.

(4) Programmed, scheduled tours by Navy information activity support units (e.g., an exhibit from the Navy Exhibit Center) when this method of reaching special audiences is considered by the Secretary of the Navy to be the most effective and economical way of accomplishing a priority public affairs program.

(5) Tours by units (e.g., the Navy Band) for which appropriated funds have been specifically provided.

(6) Support of recruiting.

(7) Events considered to be in the national interest, or in the professional, scientific, or technical interests of the Navy or Department of Defense, when approved by the Secretary of Defense or the overseas Unified Commander, as appropriate.

(c) Navy participation in all other public events will normally be at no additional costs to the government.

(1) Continuing type costs to the government which would have existed had the Navy not participated in the event will not be reimbursed by the sponsor.

(2) Transportation costs may be excluded from the costs to be borne by the sponsor when the transportation can be accomplished by government aircraft on a normal training flight or opportune airlift.

§ 705.20 Use of Navy material and facilities.

(a) The loan of equipment and permission to use facilities will be dependent on the following:

(1) The program support must be within the command's public affairs responsibility.

(2) The loan of the equipment must not interfere with the military mission of the command.

(3) Equipment must be available within the command or obtainable from another Navy command in the local area.

(4) The event must be of the type for which participation is considered appropriate.

(5) It must not be in any direct or implied competition with a commercial source.

(6) There must be no potential danger to persons or private property that could result in a claim against the government. Safety requirements will be observed.

(b) Use of open mess facilities will be permitted only under one of the following conditions:

(1) Incident to the holding of a professional or technical seminar at the command.

(2) Incident to an official visit to the command by a civic group.

(3) Navy League Council luncheon or dinner meetings (not to exceed one per quarter per group).

(4) Incident to group visits by the Boy Scouts of America, Boys Clubs of America, the Navy League Sea Cadets (by virtue of their federal charters), Girl Scouts and the Navy League Shipmates, and a few representative adult leaders.

(c) Use of the official Navy flag will be in accordance with SECNAVINST 10520.2C and of official emblem in accordance with OPNAVINST 5030.11B.

(d) Requests not meeting the criteria cited here, but which are considered by the officer in command to have merit, may be referred to the Chief of Information.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.21 Requests for Navy participation.

(a) Decisions will be made on a case-by-case basis. Events which are inappropriate for one type of participation may be entirely appropriate for another type of participation. A positive and flexible approach should be employed.

(b) Requests by civilian organizations for Navy participation in programs or events they sponsor should be addressed to the nearest naval installation and should be evaluated and authorized at that level if possible. Request exceeding local resoures, or requiring authorization from higher au-

thority, should be forwarded through appropriate channels.

(c) Requests for Armed Forces participation in public events are to be submitted on official request forms (§§ 705.33, 705.34 and 705.36) by the sponsors of events occurring outside a command's area of direct knowledge and local capability, or involving a type or level of participation unavailable locally, or requiring approval of higher authority.

(d) Fact sheets expounding upon normally requested assets are enclosed in §§ 705.33, 705.34 and 705.36 and may be reproduced and distributed locally.

(e) The official request form is to be used on all requests referred to the Chief of Information and to the Office of Assistant Secretary of Defense (Public Affairs).

§ 705.22 Relations with Community Groups.

(a) Naval commands will cooperate with and assist community groups within their capabilities, to the event authorized by current instructions, and will participate in their activitis to the extent feasible.

(b) Navy commands will encourage membership of personnel in community organizations.

(c) Officers in command will withhold approval of requests from community groups, organizations or individuals whose purposes are unclear, pending advice from the Chief of Information.

(d) Commands may make facilities, less housing and messing, available to community groups, at no expense to the government, when it is in the best interest of the Navy to do so. Mess facilities may not be used for meetings of civic groups or other asociations unless all the members of the group concerned are authorized participants of the mess as prescribed in NAVPERS 15951, except as provided below:

(1) Requests to make open mess facilities available to professional or technical seminars or civic groups meeting in connection with an official visit to the activity may be submitted to the officer in charge of the mess, or other appropriate authority. Such requests may be approved when it is shown that the inspection of the activity or the holding of a professional seminar is of principal importance and the use of mess facilities is incidental thereto.

(2) Because of the exceptional nature of the Navy League, as recognized by the Secretary of the Navy, open mess facilities may be used for luncheon or dinner meetings of Navy League Councils, but not more often than once per quarter per group.

(e) Relations with Industry and Labor in the Community (refer to SECNAVINST 5370.2F and DOD Directive 5500.7):

(1) Relations with Navy contractors and with industry and business in general are the responsibility of the officer in command, with the assistance of his public affairs officer.

(2) Navy commands will cooperate with industry and its representatives in planning and executing community relations projects of mutual interest.

(i) Visits to commands will be scheduled for industrial and employee groups under the same conditions as for other civilian groups.

(ii) A contractor may be identified in a news release, exhibit, or the like whenever the major responsibility for the product can be clearly and fairly credited to him. In such cases, both the manufacturer's name for the product and the Navy designation of it will be used.

(iii) Commands will not solicit, nor authorize others to solicit, contractors to provide advertising, contributions, donations, subscriptions, etc. Where there is a legitimate need for industrial promotion items, such as scale models, the command will contact the Chief of Information for advice as to the procedure for requesting procurement.

(iv) Similarly, if Defense contractors wish to distribute information material through official Navy channels, the Office of Information will be queried as to the desirability and feasibility of undertaking the desired distribution.

(v) Visits to contractor facilities are governed by the provisions of DOD Manual 5520.22-M (Industrial Security Manual for Safeguarding Classified Information). If nationally known

press representatives will be involved, prior approval must be obtained both from the contractor (via the Chief of Information) and from the Assistant Secretary of Defense (Public Affairs).

(3) Commands will maintain the same relationship with labor unions as with other community groups and will not take action in connection with labor disputes. Personnel inadvertently or incidentally involved in labor disputes will consult officers in command for guidance.

(f) Emergency Assistance to the Community:

(1) Navy commands will offer and provide assistance to adjacent communities in the event of disaster or other emergency.

(2) The Chief of Information will be advised immediately of action when taken, and copies of subsequent reports to the Chief of Naval Operations will be forwarded to the Chief of Information.

(3) Navy commands will participate in planning by local Civil Defense officials.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.23 Guest cruises.

(a) *General policy.* (1) The embarkation of civilian guests in Navy ships is appropriate in the furtherance of continuing public awareness of the Navy and its mission.

(i) Examples of embarkations for public affairs purposes are (but not limited to): Individuals, community service clubs, civic groups, the Navy League, and trade and professional associations.

(ii) Embarkation of media representatives on assignment is discussed in § 705.14.

(iii) Other categories may be established by the Secretary of the Navy, subject to the approval of the Secretary of Defense.

(2) It has also been demonstrated that the occasional embarkation on cruises of families and personal guests of naval personnel has contributed materially to the morale of the family circle and has instilled in each individual a sense of pride in his ship. For further information see OPNAVINST 5720.2G.

(3) Embarkations should be conducted within the framework of regularly scheduled operations; underway periods solely to accommodate guests are not authorized.

(4) Commander-in-Chief, Pacific Fleet, Commander-in-Chief, Atlantic Fleet, Commander-in-Chief, U.S. Naval Forces Europe, Commander Military Sealift Command (and their subordinate commands if so designated), Chief of Naval Education and Training, and District Commandants may authorize the embarkation of female civilians for daylight cruises. Embarkation of civilians for overnight cruises must be authorized by the Chief of Naval Operations via the Chief of Information.

(5) All guest visits are normally authorized on an unclassified basis.

(6) In all instances, due precautions must be taken for the safety of the guests. (See section 0403, pars. 6(b) and, 6(e), of the Navy Public Affairs Regulations, for procedures to be followed in the case of death of, or injury to, civilians embarked on naval ships.)

(7) For further information on policy, procedures, and eligibility criteria, see OPNAVINST 5720.2G.

(b) *Authority.* (1) Authority to establish procedures for the conduct of the embarkation of guests for public affairs purposes (including the Secretary of the Navy Guest Cruise and Guest of the Navy Cruise programs, which are discussed in § 705.24) is vested in the Secretary of the Navy. This authority is limited only insofar as the Chairman of the Joint Chiefs of Staff and the commanders of the Unified and Specified Commands (and their component commanders, if so designated) have the authority to use Navy ships to embark individuals other than news media representatives for public affairs purposes.

(i) Public affairs embarkations originating within the geographical limits of the Unified Command will be approved by and coordinated with the commanders of such commands. This authority may be delegated. Requests for such embarkations originating with the subordinate fleet or force command of a Unified Command will be submitted via the operational chain of command, to the appropriate com-

mander of the Unified Command, unless delegated.

(ii) Requests for public affairs embarkations originating from any Navy source other than the Chairman of the Joint Chiefs of Staff, or the Unified and Specified Commanders or their subordinate commands, will be submitted to the Chief of Information, who will effect coordination with the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs) as appropriate.

(iii) When guests debark in a foreign port which is in the geographic area of a Unified Command other than that in which the cruise originated, the Chief of Information will coordinate travel by obtaining concurrence of all appropriate commanders and the approval of the Chief of Naval Operations, and the Assistant secretary of Defense (Public Affairs) as appropriate.

(2) Officers in command to whom authority to embark guests for public affairs purposes is delegated will make maximum use of this authority.

(c) *Secretary of the Navy Guest Cruise and Guest of the Navy Cruise Programs.* (1) The objective of these two programs is: To expose top-level and middle-level opinion leaders in the fields of business, industry, science, education, and labor to the operation of the U.S. Navy, in order that they may gain a better understanding of its capabilities and problems, the complicated nature of modern sea-based equipment, and the high levels of responsibility and training required of Navy men and women.

(2) In addition to policy contained in paragraph (c)(1) of this section, the following policy guidelines apply to the conduct of the Secretary of the Navy Guest Cruise and the Guest of the Navy Cruise Programs.

(i) *Secretary of the Navy Guest Cruise Program.* (A) Only aircraft carriers and cruisers will be used.

(B) Cruises will be conducted once each quarter on each coast, contingent upon the availability of appropriate ships.

(C) The optimum number of guests is 15.

(D) Guests will be drawn from top-level executives and leaders who have not had previous exposure to the Navy. "Previous exposure" is defined as active or reserve service in the U.S. Navy or U.S. Marine Corps within the last 10 years; membership in the Navy League or any other Navy-oriented organization; or participation in a cruise on a U.S. Navy ship in the last 10 years.

(E) Whenever feasible, Secretary of the Navy Guests will be greeted by CINCLANTFLT or CINCPACFLT, or in their absence by the SOPA. Comprehensive unclassified briefings will be given dealing with the Navy's mission, fleet operations, and current problems.

(F) Cruises will vary in length from 3 to 7 days, when appropriate, to conform with the operating schedule of the ship.

(ii) *Guests of the Navy Cruise Program.* (A) All types of ships will be used. This will include carriers when available, after selection of a cruise for the Secretary of the Navy Guest Cruise Program.

(B) Guest of the Navy Cruise guests will be drawn from middle-level executives and leaders who have not had previous exposure to the Navy. Guests should include persons who have direct impact on recruiting, such as secondary school principals, guidance counselors, coaches and teachers.

(C) Cruises of relatively short duration (3 to 5 days) are preferred, although cruises up to 7 days are authorized. Protracted cruises will not be approved except for special circumstances.

(D) Invitations will be extended by the District of Commandants. Invitations will include:

(*1*) Statement of the purpose of the Guest of the Navy Cruise Program.

(*2*) Authorization for embarkation and, if applicable, for COD flights, with instructions for reporting on board.

(*3*) Name and rank of the commanding officer and, if applicable, name and rank of embarked flag officer.

(*4*) A caution that guests should not accept the invitation unless they are in good health.

(*5*) Statement to the effect that the tempo of operations might cause changes in scheduling which could

result in the invitation having to be withdrawn.

(E) The following necessary information may be included separately with a letter of invitation: Recommended wardrobe, passport and immunization requirements, availability of emergency medical and dental facilities, ship's store and laundry facilities, statement that guest's use of a camera will be authorized subject to certain restrictions, and a listing of those restrictions. In addition, the following statement will be included with each invitation, or form part of the attached information sheets:

The Department of the Navy has no specific authority to use its funds to defray or reimburse any personal expenses of a navy guest. As a result, the Department of the Navy cannot provide you with transportation to the port of embarkation or from the port of debarkation back to your home. Your expenses for meals will be quite nominal while you are on board a naval ship or facility. You should make provision for any extraordinary expense which may arise. For example, if a personal or other emergency arises which necessitates your returning home during the cruise, you should be prepared to take commercial transportation at your own expense from the most distant point on the cruise itinerary.

Navy ships and aircraft, by their very nature, present certain hazards not normally encountered on shore. These hazards require persons on board to exercise a high degree of care for their own safety.

Acceptance of this invitation will be considered your understanding of the above arrangements and limitations.

(iii) *Applicable to both Programs.* (A) Guests will provide their own transportation from home to the ship and return, and must reimburse the Navy for living and incidental expenses while embarked so that the program may be conducted at no additional expense to the government.

(B) Because the number of billets available to accommodate all of the potential guests is limited, the guest's opportunity to communicate his experience to his associates must be considered. For this reason, one of the criteria for selection of guests will be their level of activity in civic, professional, and social organizations. In nominating and selecting guests, effort will be made to ensure that minority citizens are included as appropriate.

(C) Atlantic cruises will be made on ships operating between East Coast ports, or between CONUS and the U.S. Caribbean ports of San Juan, PR, or Charlotte Amalie (St. Thomas), Virgin Islands. Pacific cruises will be made on ships operating between West Coast ports: Between CONUS and ports in Hawaii, Alaska, Mexico or Canada; or between ports within Hawaii or Alaska.

(D) Guests will be informed of security restrictions. Unclassified photography should be permitted on board, as pictures renew guests' feelings of identification with a ship. Guests will be advised of areas, however, where photography is prohibited, and security regulations will be courteously but firmly enforced.

(E) Guests will be billeted in officers quarters and normally subsisted in the wardroom. It is not necessary that guests be assigned individual rooms. Billeting with ship's officers promotes mutual understanding, and guests feel more closely identified with the ship's company. They will be invited to dine at least once in each mess on board, if the length of the cruise permits. Guests will be encouraged to speak freely and mingle with the crew.

(F) Guests will be accorded privileges of the cigar mess commissioned officers mess (open) ashore—with the exception of package store privileges—and the use of ship's or Navy Exchange laundry and tailor shops. Other Navy Exchange privileges will be limited to purchase of items for immediate personal use.

(G) Only emergency medical and dental care will be provided and then only where civilian care is not conveniently available.

(*1*) In the event of injury to civilians embarked in Navy ships and aircraft or visiting naval activities, commanding officers will notify the Chief of information, the appropriate Commandant, and operational commanders, by message, of the injury and action taken.

(*2*) In the event of an emergency not covered by Navy Regulations, the facts and circumstances will be reported immediately to the Secretary of the Navy.

(H) Guests may be allotted time for side trips at their own expense when an itinerary includes naval activities or ports adjacent to recognized points of interest.

(I) As a souvenir of the cruise, it is suggested that guests be provided with a photograph of the ship, perhaps suitably inscribed by the commanding officer prior to debarkation.

(J) Any publicity will be limited to that initiated by the participants. Navy-sponsored publicity will be avoided unless sought by the participants. At the same time, media inquiries or inquiries from the general public will be answered fully, the purposes of the cruise program outlined and the fact stressed that no cost to the government is incurred.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.24 Exhibits.

(a) Navy exhibits are representations or collections of naval equipment, models, devices and information and orientation material placed on public display for information purposes before audiences at conventions, conferences, seminars, demonstrations, exhibits, fairs, or similar events. Also included are general purpose displays in public buildings or public locations. Museums also occasionally request a Navy exhibit on a permanent or temporary loan basis.

(1) Exhibits may be displayed in any appropriate location or event (including commercially owned spaces such as shopping centers, malls, etc.) provided it is clearly established that such areas are places the general public frequents and that the exhibit is not for the purpose of drawing the public to that location, and that it is determined that participation is in the best interests of the Department of Defense and the Department of the Navy.

(b) Exhibits will be used for the following purposes only:

(1) To inform the public of the Navy's mission and operations.

(2) To disseminate technical and scientific information.

(3) To assist recruiting of personnel for Navy military service and for civilian employment in the Department of the Navy.

(c) Exhibit requests and procedures:

(1) Requests for Navy exhibits, other than local exhibits may be forwarded to the Navy Recruiting Exhibit Center via the local Navy recruiter with an information copy to the Chief of Information. The primary mission of the Navy Recruiting Exhibit Center is to support local Navy recruiters. Requests for exhibits for community relations events will be considered favorably only when not in conflict with recruiting requirements.

(i) Requests for exhibits must be submitted well in advance of their proposed dates of use.

(ii) Requests for mobile exhibits requiring tractor-trailer transportation should be forwarded prior to November 15th previous to the year desired. A tour itinerary of mobile exhibits will then be established for the following year.

(iii) The period of time for which an exhibit is authorized will be determined by the nature of the event and the type of exhibit (e.g., equipment from local resources used for a local celebration would normally not be exhibited for more than three days; but, a formal exhibit at an exposition might remain for the duration of the event).

(2) The office of the Assistant Secretary of Defense (Public Affairs) is the approving authority for Navy exhibits in events of international or national scope, or those requiring major coordination among the Armed Forces, or with other agencies of the Federal Government.

(i) All Navy activities will forward such requests to the Chief of Information for coordination with the OASD (PA).

(ii) Subordinate commands of a Unified Command will forward exhibit requests of the above types to the Unified Commander concerned, via the chain of command.

(3) The official OASD(PA) Request Form for Armed Forces Participation will be used. See Armed Forces Request Form, § 705.36.

(4) Requests for exceptions to policy for exhibit displays should be forwarded to the Officer in Charge, Navy Recruiting Exhibit Center.

(5) Policy guidance on costs is defined in § 705.19.

(6) Occasionally, a project officer will be assigned to coordinate use of the exhibit with the sponsor.

(i) Project officers are normally commissioned officers, equivalent civilian personnel, local recruiters or reservists, who have been assigned the responsibility of coordinating Service participation in a special event.

(ii) The project officer should establish immediate liaison with the sponsor.

(iii) The project officer should assist in determining the actual location of the exhibit, make arrangements for assembling and disassembling the exhibit material, and supervise these operations.

(iv) The project officer will ensure Navy and Department of Defense policies are followed, and will coordinate local news releases concerning Navy participation.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.25 Navy Exhibit Center.

(a) The center is a field activity of the Chief of Information and is located in the Washington Navy Yard. Its primary mission is to produce, transport and display U.S. Navy exhibits throughout the United States. It also facilitates assignments of Navy combat artists and, additionally, produces exhibits for its own tours and for short-term loans to naval commands.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.26 Exhibit availability report.

(a) A center index of exhibits which are available at the local level in each Naval District is maintained by the exhibit center. To achieve maximum effectiveness for an overall integrated program, an up-to-date registry of all exhibits is required.

(b) A current inventory of exhibits headquartered in Washington, DC, and managed by the Navy Recruiting Exhibit Center for scheduling purposes may be obtained by writing to: Officer-in-Charge, Navy Recruiting Exhibit Center, Washington Navy Yard, Washington, DC 20374.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§§ 705.27–705.28 [Reserved]

§ 705.29 Navy Art Collection.

(a) The U.S. Navy has continued to record its military actions, explorations, launchings, etc., in fine art form since before World War II. The present Navy Combat Art Collection contains over 4,000 paintings and sketches. A significant number of new works is being added each year. The combat artists of World War II have been replaced by civilian artists who witness today's Navy in action, record their impressions, and donate their works of art to the Department of the Navy.

(1) The voluntary services of most of the artists are arranged through the Navy Art Cooperation and Liaison Committee (NACAL) which operates in close cooperation with the Salmagundi Club of New York City and the Municipal Art Department of the City of Los Angeles.

(2) The Chief of Information has established liaison with the Salmagundi Club in order to maintain a continuing historical record of the Navy. Organized in 1871, the Salmagundi Club is the oldest club of professional artists in the United States. The Club appointed a Navy Art Cooperation and Liaison (NACAL) Committee to advise the Navy on art matters and to nominate artists for assignment to paint Navy activities through the world. The Chief of Information reviews the nominations, and issues SECNAV invitational travel orders to each artist approved.

(3) The following policy pertains:

(i) All finished art portraying the Navy and produced by Navy artists on active duty for that purpose and by guest artists working under invitational travel orders becomes the property of the Department of the Navy.

(ii) Civilian artists selected to paint Navy life through cooperation of a private sponsor and the Chief of Information may be authorized by the Chief of Information or the Office of

the Secretary of Defense to retain their works.

(iii) Paintings, sketches, drawings and other forms of artwork will not be accepted by the Department of the Navy unless all reproduction rights are surrendered and unless they become the permanent property of the Department of the Navy.

(iv) Requests for reproduction of combat art for use in advertising or publication will be directed to the Chief of Information.

(b) Responsibilities:

(1) The Chief of Information exercises supervision and control of the Navy Art Program and issues SECNAV invitational travel orders and letters of invitation to artists selected for assignment.

(2) When directed by the Chief of Information or other appropriate Navy authority, a NACAL project officer will perform the following functions:

(i) Act as a local liaison officer for the NACAL Program.

(ii) Assist NACAL artists on assignments within his area.

(3) The Curator Navy Combat Art Center, in coordination with the Chief of Information, will:

(i) Plan trips for the NACAL Program.

(ii) Approve requests for art displays.

(iii) Provide logistic support for the maintenance, storage, shipment and display of the Navy Combat Art Program.

(c) Requests for art displays should be forwarded to the Director, Community Relations Division, Office of Information, Navy Department, Washington, DC 20350.

(d) Exhibition of Navy Art:

(1) Operation Palette I" is a carefully selected group of 75 to 100 combat art paintings depicting Navy and Marine Corps activities during World War II. The schedule of "Operation Palette I" is promulgated by the Officer-in-Charge, Navy Recruiting Exhibit Center and supervised by the Chief of Information, with the concurrence of District Commandants. Schedules are arranged so that the exhibition travels within a particular Naval District for several months at a time. District Commandants designate project officers for each city where "Operation Palette I" is exhibited. The project officer makes all arrangements, including suitable location, publicity and personnel to assist the chief petty officer who travels with the collection. Promotional kits are provided by the Officer-in-Charge, Navy Recruiting Exhibit Center. Requests for exhibitions are not desired, since the collection always travels on a prearranged tour.

(2) "Operation Palette II" consists of 75 to 100 paintings representative of the worldwide operations of the contemporary Navy and Marine Corps * * * the Navy today * * *, and travels on prearranged tours similar to "Operation Palette I."

(3) Other exhibitions of original paintings from the Combat Art Collection may be scheduled on request by either Navy commands or civilian art groups. Requests should be directed to the Director, Community Relations Division, Office of Information, Navy Department, Washington, D.C. 20350 and contain the following:

(i) The occasion.

(ii) Inclusive dates. (Not less than 10 days or more than 90 days sub-custody.)

(iii) Expected attendance and type of publicity planned.

(iv) Amount of space allotted.

(v) If Navy-sponsored show, certification that 24-hour security will be provided for the paintings while in custody.

(vi) If civilian-sponsored show, statement that transportation and insurance requirements will be met. (Physical security must be available for exhibit, with an attendant on duty during open hours and locked building or other means of protecting exhibit when closed to the public.)

(e) Navy Combat Art Lithograph Program:

(1) This program makes available full color, high quality lithographs which are faithful reproductions of the original artwork on quality paper of selected works of art from the Navy Art Collection.

(2) Additional information and ordering details are contained in

CHINFO NOTICE 5605, which is issued periodically.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.30 Aerospace Education Workshop.

(a) This program is devised by the Navy to give students at colleges and universities conducting teacher training a comprehensive background in the field of aviation. The teachers in turn integrate this knowledge into their education programs.

(b) Appropriate commands are encouraged to provide assistance to educational institutions sponsoring the workshop program: *Provided,* That such support does not interfere with the command's primary mission and that such cooperation involves no additional expense to the government.

(c) The Chief of Naval Operations has cognizance of all assistance provided by the Navy to all Aerospace Education Workshop program. A summary report of local command participation in Aerospace projects will be submitted to the Chief of Naval Operations via the appropriate chain of command. Information copies of such reports will be sent to Commander, Navy Recruiting Command and the Chief of Information. For further information see OPNAVINST 5726.1C.

§ 705.31 USS Arizona Memorial, Pearl Harbor.

(a) Limited space and the desirability of keeping the Memorial simple and dignified require the following practices to be observed:

(1) Rendering of formal ceremonies on the USS Arizona Memorial will be confined to Memorial Day.

(2) Observances on December 7, or any other date, at the request of individuals or organizations, will consist of simple wreath-laying, or other appropriate expressions conducted with dignity.

(3) Plaques intended for display on the Memorial may be presented by headquarters of national organizations only. Plaques from regional, state or local organizations cannot be accepted. Only one plaque will be accepted from any organization. The overall size of the plaques, including mounting, must be no larger than 12 inches square.

(b) The Commandant, Fourteenth Naval District, is designated to coordinate all formal or informal observances involving the Memorial.

§ 705.32 Aviation events and parachute demonstrations.

(a) Armed Forces aircraft and parachutists may be authorized to participate in appropriate in public events which meet basic Department of Defense criteria. This participation may be one of the officially designated military flight or parachute demonstration teams, flyover by aircraft, a general demonstration of capabilities by aircraft, or the static display of aircraft.

(b) Events which are appropriate for aviation participation include: Dedication of airports; aviation shows; aircraft exposition; air fairs; recruiting programs; civic events which contribute to the public knowledge of naval aviation equipment and capabilities and to the advancement of general aviation; public observances of certain national holidays (Armed Forces Day, Veterans Day, Memorial Day and Independence Day); national conventions of major veterans organizations; memorial services for deceased, nationally recognized dignitaries; and receptions for foreign dignitaries.

(c) Support of Armed Forces recruiting is the primary purpose of military flight and parachute demonstration teams. Armed Forces recruiting teams are available to assist sponsors in coordinating advance publicity and information coverage to insure maximum exposure for the demonstration team and the event. This assistence is at no additional expense to the sponsor; however, the sponsor is required to give full support to the recruiting effort and to cooperate fully with local service officials. Such support could include (but is not limited to) the provision of prime space for recruiters at the event site and the provision of courtesy passes in controlled quantities to recruiters for the purpose of bringing recruit prospects and recruiting advisors to view the show.

(d) DOD support of air show fund raising efforts in the form of provision of military flight and parachute dem-

onstration teams is limited to charities recognized by the Federal Services Fund-Raising Program. These include such agencies as the United Givers Fund, Community Chests, National health Agencies (as a group), International Service Agencies and the military aid societies. Armed Forces support to fund-raising events for a single cause, even though the charity is a member of a federated or joint campaign or donates in part to one or several of the campaigns, is inconsistent with the basic position of Department of Defense. The name of the nearest Combined Federal Campaign coordinator will be supplied to the sponsor, or if he chooses, he might elect to work with the local United Givers Fund (Community Chest). As a minimum, the sponsor must agree to provide at least half of the profit above costs to the Combined Federal or United Givers Campaigns to receive Armed Forces support.

(e) Request form. This form is used to request military flight and parachute demonstration team participation in public events. The information is required to evaluate the event for appropriateness and compliance with Department of Defense policies and for coordination with the units involved.

GENERAL

1. Title of Event ———————
Town or City: ———— State: ———
Date: ———— Time—From: ———
To: ——— Place: (Airport, etc.) ———
2. Sponsor: ———————
3. The sponsor (is) (is not) a civic organization and the event (does) (does not) have the official backing of the mayor.
4. The sponsoring organization (does) (does not) exclude any person from its membership or practice any form of discrimination in its functins, based on race, creed, color or national origin.
5. Sponsor's representative authorized to complete arrangements for Armed Forces participation and responsible for reimbursing Department of Defense for accrued expenses when required:

Name: ———————
Address: ———————
City, State: ———— Zip: ———
Telephone: (Office) ——— (AC) ———

———————
(home) ———— (AC)

———————
6. Purpose of this event (explain fully): —

———————
7. Expected attendance: ————
8. Is this event being used to promote funds for any purpose? ————
9. Admission charge: ————
"Charge for seating: ———— ——
10. Disposition of profits which may accrue: ———————
11. Will admission, seating and all other accommodations and facilities connected with the event be available to all persons without regard to race, creed, color or national origin? ———————
12. Will the standard Military Services allowance for quarters and meals be provided by the sponsor for Armed Forces participants? ———————
13. Will transportation at sponsor's expense be proviced for Armed Forces participants between the site of this event and hotel? ———————
14. Will telephone facilities, at sponsor's expense, be made available for necessary official communications regarding the event?

———————
15. It may be necessary for representatives of the requested unit to visit the site prior to the event. Will transportation, meals and hotel accommodations be provided by the sponsor? ———————

———————
16. Please describe the space which will be provided to recruiters: ———————

———————

———————

———————
17. Designate charity beneficiary(s): ——

———————

FLIGHT TEAM, PARACHUTE TEAM, FLYOVERS, STATICS

1. This request is for (check appropriate line):

Flight Team Demonstration .....
U.S. Navy Blue Angels .....
U.S. Air Force Thunderbirds. (Cost for either team is $1500.00 for each day team scheduled at your event.) .....
Aircraft Flyover: (No cost to sponsor.) .....
Static Aircraft: (Cost is $25.00 per day per crewmember.) .....
U.S. Army Silver Eagles: (Cost for this team is $750.00 for each day team scheduled at your event.) .....

Parachute Team Demonstration U.S. Army Golden Knights: (Cost is $25.00 per day per man for each day required to support your event. Team consists of 10–14 personnel.) .....
(Other).....

2. Flight and/or Parachute Team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land. Please give the specific location of your event———————————————

———————————————

If an airport, name of airdrome facility and longest usable landing runway. Airport:

———————————————

Runway data:———————————feet.

3. Flyovers, Flight and Parachute Team demonstrations require that sponsors secure FAA clearance or waiver. Will steps be taken by sponsor to accomplish this at least sixty days prior to the event? ———————

4. Flight and Parachute Team demonstrations must adhere to FAA regulations which specify that spectators not be permitted within 1500 feet of an area over which the flight demonstration takes place, or 250 feet of the jump area over which parachutists are performing. What type of crowd control is planned? ———————————

———————————————

5. Flight and Parachute Team demonstrations require that an ambulance and a doctor be on the site during the demonstration. Will this requirement be met?————

6. Flight and Parachute Team demonstrations require that the sponsor provide a recent aerial photograph, taken vertically from an altitude of 5,000 feet or higher, to the team(s) giving the demonstration. Will this requirement be met? ———————

7. Flight Team demonstrations and Static Aircraft displays require that the sponsor provide suitable aircraft fuel (JP jet fuel or aviation gas, as appropriate) and pay the cost of transporting and handling this fuel, if it is not available at the staging airport under military contract prices. Will this requirement be met? ———————

8. Flight Team demonstrations and Static Aircraft displays require mobile firefighting, crash and ground-to-air communications equipment at the demonstration site. Will this requirement be met? ———————

9. Flight Teams and Static Aircraft displays require that the sponsor provide guards for the aircraft that land and are parked at the site during their entire stay. Will this requirement be met? ———————

10. Parachute Team demonstrations may require that the sponsor arrange aircraft transportation from the team's home base to the location of the event, for use as a jump platform and return to the home base. Will this requirement be met, if necessary?

———————————————

11. Name and address of any Armed Forces representative or government official with whom you have discussed possible participation: ———————————

———————————————

CERTIFICATION

I certify that the information provided above is complete and correct to the best of my knowledge and belief. I understand that representatives of the Military Services will contact me to discuss arrangements and costs involved prior to final commitments.

Signature: ———————————————
(Sponsor's Representative)

Date of Request: ———————————

Return this form to:———————————

(f) Definitions: A flight team demonstration is an exhibition of precision aerial maneuvers flown by the official Department of Defense military flight demonstration teams, the U.S. Air Force Thunderbirds, the U.S. Navy Blue Angels and the U.S. Army Silver Eagles. An aircraft demonstration is a flight demonstration by aircraft other than those of the teams listed above and designed to portray tactical capabilities of aircraft by a single aircraft (i.e., the U.S. Marine Corps "Harrier") or group of aircraft, including air-to-air refueling, helicopter hover and pick-up or rappelling capabilities, Low Altitude Parachute Extraction System, maximum performance take-off, etc. A parachute demonstration is an exhibition of free-fall and precision landing techniques by the official DOD parachute team, the U.S. Army Golden Knights. Other parachute demonstrations can be performed by the U.S. Navy Parachute Team, or another unofficial team or sports parachute club representing the Department of Defense. A flyover is a flight of not more than four aircraft over a fixed point at a specific time and does not involve precision maneuvers or demonstrations. Flyovers are authorized for certain events when the presence of Armed Forces aircraft over-

head would contribute to the effectiveness of the event based on a direct correlation between the event and the aircraft. Flyovers can also be authorized for occasions primarily designed to encourage the advancement of aviation and which are of more than local interest. Flyovers by any of the official DOD flight teams are not authorized. Parades are not considered an appropriate event for authorizing flyover support. The static display of aircraft is the ground display of any military aircraft and its related equipment, not involving flight, taxiing or starting of engines.

(g) Events which are appropriate for Armed Forces aviation participation in the public domain include such activities as dedication of airports and facilities, aviation shows, expositions, and fairs; and other civic events which contribute to the public knowledge of the U.S. Military Services aviation equipment and capabilities. The number one priority for utilization of military aircraft and parachutists in such events in the public domain is to support the recruiting aspects of the all-volunteer force concept. The approval of any such military demonstration will only be authorized if a maximum recruiting benefit exists at each location.

(h) Costs. (1) The cost for either the United States Air Force Thunderbirds or the United States Navy Blue Angels will be $1500 for each day a demonstration is scheduled. If the United States Army Golden Knights precision parachute team is scheduled for your event, the cost will be $25 per man per day for each day required to support your event, to include the days of travel if required. Under normal conditions, this group is comprised of fourteen members: Nine jumpers, three aircraft crewmen, one ground controller, and a narrator. The sponsor will be advised by the Golden Knights in advance of the costs related to his event for which the government must be reimbursed. The United States Army Silver Eagles helicopter team, composed of seven helicopters, performs precision formation manuevers and solo helicopter aerobatics to demonstrate the capabilities of modern helicopters and the skill of Army aviators. The Silver Eagles performance lasts about 30 minutes and is conducted entirely in full view of spectators on the crowd line. The cost for the team is $750 for each day a demonstration is scheduled. The sponsor should make a check payable to the Treasurer of the United States for the required amount and present it to the appropriate demonstration team commander in advance of the scheduled event.

(2) Costs associated with static aircraft are normally $25 per day for each crew member plus possible fuel requirements discussed below. Charges for any other military parachuting demonstration (i.e., U.S. Navy Parachute Team, local Armed Forces sport parachute clubs, etc.) will depend on the number of personnel and transportation involved. Checks payable to the Treasurer of the United States should be made available to the appropriate aircraft commander for static displays or parachute team commander upon arrival at the event.

(i) As noted in the Department of Defense request form, the sponsor is required to pay per diem costs for team and static display crew members except for flyovers or aircraft demonstrations not involving landing.

(3) These costs are binding after a team or crew personnel have arrived at the show site, even though weather conditions or other unforeseen circumstances force the event to be cancelled. These funds provided by the sponsor will be utilized by team members or crew personnel for paying housing and subsistence costs. The actual breakdown of the per diem involved is $13.20 for housing, $9.30 for subsistence, and $2.50 for incidental expenses. In those locations where housing and subsistence cannot be procured for these amounts, it will be the responsibility of the sponsor to absorb the additional cost. As stated, these costs will cover participation but does not include certain ground support requirements (i.e., ground transportation, telephone, etc.) to be furnished by a sponsor as outlined in a team support packet.

(4) Other costs that could be incurred by the sponsor are in the area of the sponsor's agreement to provide

suitable aircraft fuel (defined as JP jet fuel or aviation gas and lubricants) at U.S. Government contract prices. Where fuel is available from local military stocks—usually military installations—or when fuel is available from commercial into-plane contract locations, the U.S. Government will pay all fuel costs. If military contract fuel is not available at the show site, the sponsor will be required to pay all costs above the contract price and that price charged by the local supplier. However, the sponsor may choose to transport military contract fuel from a military base or a commercial airport having a U.S. Government into-plane contract. In this case, his cost would be only the transporting and handling of this fuel to the show site.

(5) The Department of Defense no longer requires the sponsor to provide the Department with a public liability and property damage insurance policy. This should in no way deter the sponsor from obtaining such liability and property damage insurance he feels is necessary for his own protection. Due to the costs that could accrue to the sponsor in case of cancellations because of inclement weather, the sponsor may wish to consider rain insurance to protect his investment. Previous sponsors have advised us that such insurance is available from most commercial companies.

(i) Other information. (1) Flight and/or parachute team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land. For the U.S. Air Force Thunderbirds or U.S. Navy Blue Angels to operate from an airport show site, the following operational requirements must be met:

(i) Minimum useable runway length for the Thunderbirds is 5000 feet by 150 feet in width.

(ii) Minimum useable runway length for the Blue Angels is 6000 feet by 150 feet in width.

(iii) Minimum single landing gear load bearing capacity for Thunderbirds is 45,000 pounds; for Blue Angels, 21,000 pounds. Tandem landing gear load bearing capacity is 155,000 pounds for Blue Angels and Thunderbirds.

(2) A staged performance may not be given if the location planned for the show site does not meet these minimums. The maximum distance for a staged performance" under normal conditions is 50 nautical miles. It should be noted that staged performances are seldom authorized since the recruiting potential is reduced at such events.

(3) The type and number of static and/or flyover aircraft which may be assigned is entirely dependent upon the Military Services' capability to provide such resources at the time of your event. This capability is affected by operational commitments and sponsors are advised that confirmation of static/flyover aircraft cannot be made by the appropriate Service more than 15-30 days before your event.

(4) The U.S. Army Silver Eagles are normally restricted to performances at airports. Other open land areas may be operationally suitable but require the prior approval of the team commander in each case.

(5) Only one flight demonstration team and a parachute demonstration team may be authorized for any one event. Military aircraft demonstrations may not be authorized for events on the days a flight team is participating. A flyover is not authorized when a flight team is participating unless it can be provided by a locally-based National Guard or Reserve component.

(6) Participation by the U.S. Navy Blue Angels and the U.S. Air Force Thunderbirds is normally limited to two consecutive years in any one event. This usually involves one appearance by each of the two flight teams. This provision may be waived when other appropriate requests have not been received, when the team is performing in the same geographical area and has open dates or when the event is national or international in nature and participation would be in the best interests of Department of Defense. Participation in an event is normally limited to two days unless a third day can be included without preempting other requests.

(7) Sponsors are required to obtain a Federal Aviation Agency (FAA) waiver for any demonstration by military aircraft and/or parachutists in the public

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domain. The final authorization for such Armed Forces participation hinges upon the sponsor securing this waiver far enough in advance to permit adequate planning (normally not later than 60 days prior to the event). Further guidance on the details of obtaining this waiver will be contained in the team support packet or FAA. FAA regulations require that spectators be confined 1500 feet from a flight or aircraft demonstration and 250 feet from a parachute demonstration.

(i) In some cases, parachute demonstrations require that the sponsor arrange for appropriate transportation for the team and equipment from its home station to the event and return.

(ii) Mass parachute jumps, drops of equipment, assault aircraft demonstrations, or tactical helicopter troop landings under simulated tactical conditions, will be limited to military installations. These activities, except those scheduled as part of regular training programs, are not authorized for public events in the civil domain.

(8) When civilian air racing is involved in an event where Armed Forces participation has also been scheduled, prize monies must come from sources other than admission charges.

(9) Flight team, parachute and aircraft demonstrations also require that the sponsor provide: (i) Recent aerial photograph of the site; (ii) an ambulance and doctor at the site; and (iii) Guards for the Armed Forces aircraft during their entire stay. The aerial photograph should be recent, taken vertically from at least 5,000 feet.

(10) Maximum advantage of Armed Forces recruiting will be taken at appropriate events in the public domain where demonstrations by military aircraft and parachutists have been authorized.

(11) Exception to the policies contained herein will only be considered by OASD(PA) on events of national or international significance.

(12) Department of Defense hosts a scheduling conference in mid-December each year to prepare U.S. Air Force Thunderbirds, U.S. Navy Blue Angels, U.S. Army Golden Knights and U.S. Army Silver Eagles participation schedules for the ensuing year. All requests for such demonstrations from sponsors should reach OASD(PA) prior to the middle of November each year to be considered at this conference. In order to accommodate many requests Department of Defense receives for other parachuting demonstrations, aircraft demonstrations, static aircraft displays, and flyovers, each request must be received by OASD(PA) a minimum of 30 days in advance of the event and preferably 60 days in advance.

(13) If there are any points that a member of the public might wish to have clarified, contact Chief, Aerial Events Branch, OASD(PA), Room 1E790, The Pentagon, Washington, DC 20301. Telephone: AC (202) 695-6795 or 695-9900.

§ 705.33 Participation by Armed Forces bands, choral groups, and troops in the public domain.

(a) Military musical participation in public events which otherwise meet the criteria outlined herein will be limited to patriotic programs as opposed to pure entertainment and will not duplicate a performance within the capability of a civilian group. For example, music to accompany the presentation of the national colors, or a performance of military or patriotic music by a military band, drum and bugle corps or choral group may be authorized; background, dinner, dance or other social music is considered "entertainment."

(b) Requests received for military musical participation in appropriate events in the civilian domain must include an indication from the sponsor that there is no conflict with the local civilian musicians concerning the appearance of Navy musicians. A statement to this effect from the cognizant local musicians' union must be obtained by the sponsor and attached to his request.

(c) Armed Forces musical units may be authorized to provide certain specified musical programs in the public domain. The performance must not place military musicians in competition with professional civilian musicians. Background, dinner, dance or

other social music cannot be authorized. The specified programs which may be authorized usually include a short opening or closing patriotic presentation. Musical selections normally consist of a medley of military or patriotic songs, honors to the President or Vice President (if he is there), or music to accompany the presentation of colors by a Color Detail.

(1) Armed Forces musical units may be authorized to participate in official government, military and civic functions.

(i) Official government functions include those in which senior officials of the Federal government are involved in the performance of their official duties.

(ii) Official military functions include social activities held on military installations (or off when the Military Service certifies that suitable facilities are not available on post) which are sponsored by the Military Services, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel and their guests.

(iii) Official civic functions include such State, county or municipal events as inaugurals, dedication of public buildings and projects, the convening of legislative bodies, and ceremonies for officially invited government visitors.

(2) Armed Forces musical units may also be authorized to provide patriotic and military programs at national conventions and meetings of nationally-recognized civic, patriotic and veterans organizations.

(d) Bands, drill teams and other units can normally participate at no cost to the sponsor if the event is within the installation's immediate community relations area (approximately 100-mile radius).

(1) Normally, not more than one band or other musical unit will be authorized for a parade in the civilian domain. This guidance intended to assure widest possible participation in public events of local interest (particularly on national holidays) does not apply to national convention of veterans' groups or other events having national significance.

(2) All Armed Forces participation in international and national events, and in the Washington, DC area, must be authorized by the Assistant Secretary of Defense (Public Affairs).

(3) Requests for Armed Forces musical or troop units when no military installation is accessible, or for the Washington, DC-based ceremonial bands or troop units (when the event is outside the Washington, DC area), should be addressed to the parent Service of the unit:

(I) U.S. ARMY

Chief of Public Information, Department of the Army, Washington, DC 20310.

(II) U.S. NAVY

Chief of Information, Code OI-321, Department of the Navy, Washington, DC 20350.

(III) U.S. AIR FORCE

Director of Information, Secretary of the Air Force, Community Relations Division, Washington, DC 20330.

(IV) U.S. MARINE CORPS

Commandant of the Marine Corps, Code AG, Headquarters, U.S. Marine Corps, Washington, DC 20380.

(4) Armed Forces units may not be authorized to participate when:

(i) The event directly or indirectly endorses or selectively benefits or favors (or appears to do so) any private individual, commercial venture, sect, fraternal organization, political group, or if it is associated with solicitation of votes in a political election.

(ii) Admission, seating and other accommodations or facilities are restricted in any manner with regard to race, creed, color or national origin.

(iii) The sponsoring organization or group excludes any person from its membership or practices any form of discrimination in its functions, based on race, creed, color or national origin.

(iv) An admission charge is levied on the public primarily to see participation by an Armed Forces unit.

(v) There is fund-raising of any type connected with the event, unless all profits are to be donated to a charity which is one of the consolidated programs recognized by the Federal Services Fund-Raising Program. These are the United Givers Fund Community

Chest, National Health Agencies (as a group), the International Service Agencies, and the American Red Cross (when not included in a consolidated campaign). The Military Services' Welfare Societies (Army Emergency Relief, Navy Relief and Air Force Aid Society) are also included.

(5) Sponsors of an event must agree to reimburse the Military Services concerned for transportation and per diem when participation is authorized at no additional cost to the government.

(6) Participation by Armed Forces musical units in other areas is within the authority of local military commanders, and requests for participation should be made directly to those local military installations. All requests should be submitted no earlier than 60 days and preferably no later than 45 days prior to the event.

§ 705.34 Other special events.

(a) *Ship visits.* Requests for visits generally originate with civic groups desiring Navy participation in local events. Often, members of Congress endorse these requests, advising the Navy of their interest in a particular event. Because of the marked increase in requests for ship visits, and in order to give equal consideration to all requests, the Chief of Information has arranged for quarterly meetings of representatives from CHINFO, Commander, Navy Recruiting Command, Chief of Naval Operations and Chief of Legislative Affairs. Based on the importance of the event (nationally, regionally, or locally) location, and prospective audience, recommendations are consolidated and forwarded to the fleet commanders prior to their quarterly scheduling conferences.

(b) *Visits to Naval activities*—(1) *Types of visits.* (i) General visits or Open House are occasions when a ship or station acts as host to the general public. These visits will be conducted in accordance with instructions issued by Fleet and Force Commanders, District Commandants, or other cognizant authority.

(ii) Casual visits are visits to ships or stations by individuals or specific groups, as differentiated from the general public. Details and procedures concerning these visits are a matter of command discretion.

(iii) Tours are occasions when a ship or station is host to a specific group on a scheduled date. Some of the larger shore commands also regularly schedule one or more sightseeing type tours daily during seasons when many vacationers ask to visit the command.

(2) *General rules.* Prior approval for general visiting or Open House at any time other than civic-sponsored public observances and official ceremonies for Armed Forces Day, memorial Day, Independence Day, and Veterans Day, and for observances in overseas areas of similar significant holidays, will be requested as follows: Fleet units visiting U.S. ports, from Senior Officer present Afloat; fleet units visiting foreign ports, from commander ordering the visit; shore stations and district vessels in the United States, from District Commandants; and overseas shore stations, from the naval area commander.

(c) *Official functions.* (1) Navy units may be authorized by local commanding officers to participate in official government military and civic functions, except in the Washington DC area where OASD(PA) retains authority.

(2) Official government functions include those in which senior officials of the federal government are involved in the performance of their official duties.

(3) Official military functions include social activities held on military installations (or off, when it is certified that suitable facilities are not available on base), which are sponsored by the Navy, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel and their guests.

(4) Official civic functions include such state, county or municipal events as inaugurals, dedications of public buildings and projects, and convening of legislative bodies and ceremonies for officially invited government visitors.

(5) Overseas, similar functions attended by comparable host-country officials in their official capacities might

also be considered appropriate for Navy participation.

(d) A parade which is sponsored by the community as a whole (rather than by a single commercial venture) and held on a Sunday or holiday or at a time when shops are closed for business may be a public event for which participation could properly be authorized; representation by individual commercial ventures in such parades need not be a bar to Navy participation as long as the emphasis is planned and placed on the civic rather than commercial aspects. Such participation will be at no additional cost to the government.

(e) *Fund-raising events.* (1) Navy support of fund-raising events must be limited to recognized, joint or other authorized campaigns. Navy support of fund-raising events or projects for a single cause, even though the cause is a member of one of the federated, joint or authorized campaigns, or donates in part to one of several of the recognized campaigns, is not authorized by Department of Defense.

(2) Navy support for a single-cause fund-raising event may be authorized if the event is:

(i) In support of Navy recruiting objectives;

(ii) Supported by a letter indicating the local United Way representative has no objection; and

(iii) Approved by the local Navy Commander as a single-cause charity which has broad local benefit.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.35 Armed Forces participation in events in the public domain.

(a) Requests for bands, troops, units, teams, exhibits and other Armed Forces participation should be addressed to the nearest military installation. Local commanders have resources which they can commit to appropriate events if mission requirements permit. If no military installation is accessible, or if resources requested are not available locally or require approval by higher authorities, a standard Department of Defense Request Form should be completed. This form is used to evaluate the request, determine appropriateness of the event and compliance with Department of Defense policies, and eliminate repeated correspondence. The request form should be returned to the office or military command from which it was received unless another address is indicated.

(b) Basic criteria governing Armed Forces participation in public events have been developed by the Department of Defense to ensure compliance with public law, to assure equitable distribution of resources to as many appropriate events as possible, and to avoid excessive disruption of primary training and operational missions of the Military Services. the following general rules and information are included as an aid to you in understanding Department of Defense policies and in planning programs of mutual benefit to the Armed Forces and your community.

(1) When evaluating requests for Armed Forces participation in public events, the interests of the Department of Defense and the public at large, operational requirements of the Military services, and availability of resources are prime considerations. Commitment of resources to specific events must be balanced with the above factors and with requests for similar participation received from other sources.

(2) Department of Defense participation and cooperation must not directly or indirectly:

(i) Endorse or selectively benefit or favor or appear to endorse or selectively benefit or favor any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, fraternal organization, political organization, or commercial venture.

(ii) Be associated with the solicitation of votes in a political election. Sites such as commercial theaters or department stores, churches or fraternal halls; and events such as testimonials to private individuals or sectarian religious services, are generally inappropriate for Armed Forces participation.

(3) Participation by the Armed Forces in any event or activity may be authorized only if admission, seating and all other accommodations and

facilities are available to all without regard to race, creed, color or national origin, and only if the sponsoring organization does not exclude any form of discrimination based on race, creed, color or national origin. This does not bar participation in events sponsored by nationally-recognized veteran's organizations when the program is oriented toward the veterans' interests, nor does it bar participation in non-public school events when the program is directed toward education or recruiting.

(i) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit or exhibit. When admission is charged, the Armed Forces activity must not be the sole or primary attraction.

(4) Armed Forces participation is authorized in a fund-raising event only when the sponsor certifies that all net profits in excess of actual operating costs will be donated to one of the consolidated programs recognized by the Federal Services Fund-Raising program. These include such agencies as the United Givers Fund, Community Chests, National Health Agencies (as a group), International Service Agencies and the military aid societies.

(5) When Armed Forces participation in an event is in the mutual interest of the Department of Defense and the sponsor of the event, participation will be authorized at no additional cost to the government. Additional costs to the government—travel and transportation of military personnel, meals and quarters or standard per diem allowance, etc.—will be borne by the sponsor.

(6) Department of Defense policy prohibits payment by the Armed Forces for rental of exhibit space, connection of electricity, or utility or janitorial costs.

(7) The duration of participation by military units in any one event is limited in the interests of proper utilization and equitable distribution of Armed Forces manpower and resources. While an exhibit might be scheduled for the duration of an event, a unit such as a military band is limited to three days.

(8) Armed Forces participation in professional sports events and post-season bowl games will normally be authorized at no additional cost to the government, will emphasize joint Service activity and must support recruiting programs. Participation in beauty contests, fashion shows, pageants, Christmas parades, and motion picture premieres is not authorized since military support would violate policy and appropriateness.

§ 705.36 Government transportation of civilians for public affairs purposes.

(a) *General policy.* (1) Regulations on transportation of civilians vary according to whether:

(i) The civilians are news media representatives or not.

(ii) The travel is local or nonlocal (see paragraph (b) of this section).

(iii) The purpose of the travel is to get to a desired destination or is to observe the Navy at first hand.

(2) Authority for embarkation of individuals in naval vessels and military aircraft is vested in the Chief of Naval Operations by § 700.710 of this chapter. Nothing in this part shall be construed as limiting his authority in this regard.

(3) The following policy has been established by DOD for providing all types of Navy transportation to non-Navy civilians.

(i) Military transport facilities shall not be placed in a position of competition with U.S. commercial carriers.

(A) When embarkation of a newsman is necessary for him to obtain news material about a ship, aircraft, cargo or embarked personnel, or when he is invited to report on a matter of special interest to the Navy, it is not considered that the transportation furnished him is in competition with commercial transport.

(B) An exception is also made for short trips between an airport (or other transportation center) and the command. Cars and buses within the resources of the command may be used for meeting guests or taking them to make their travel connections.

(ii) When authorization is requested for travel which is of interest to or will affect more than one command or Service, the approving authority will coordinate the request with all other

interested commands, Services and Agencies.

(iii) Travel in connection with any public affairs program arranged by the Navy jointly with another Federal Department or Agency or a foreign government will be authorized only by the Assistant Secretary of Defense (Public Affairs, or those to whom he has delegated this authority. Navy commands desiring authorization of such travel will forward the request to the Chief of Information.

(iv) If a request for travel for nonlocal public affairs purposes is disapproved, sufficient reasons should be provided so that the action is clearly understood by the individual or group concerned.

(b) *Definition of local v. nonlocal travel.* (1) Local travel is travel within the immediate vicinity of the command concerned in connection with a public affairs program of local interest only. (For air travel within the continental U.S., about 150 miles or less is generally considered local.)

(2) Nonlocal travel is that conducted in connection with a public affairs program affecting more than one Service, geographic area or major command, usually of primary concern to higher authority.

(c) *Transportation of news media representatives.* (1) This section applies to media representatives who are embarked for the purpose of news gathering or of traveling to an area in order to cover a news event. It does not apply to:

(i) Correspondents when members of groups embarked as regular cruise guests of the Navy.

(ii) Casual trips by correspondents to ships in port or to shore stations in CONUS. Such visits may be authorized by officers in command or higher authority in accordance with instructions promulgated by the Chief of Naval Operations. Written orders are not required.

(2) Local travel. Commanding officers at all levels are authorized (under Defense Department policy) to approve local travel for public affairs purposes within the scope of the mission and responsibilities of their command, if:

(i) Public interest in the public affairs purpose involved is confined primarily to the vicinity of that command.

(ii) The travel is being provided for the benefit of local media and meets a naval public affairs objective.

(iii) Scheduled commercial air transportation is not readily available.

(iv) The aircraft to be used is a helicopter, or multiengine dual piloted aircraft, and is within the resources of the host command on a not-to-interfere basis. This provision does not apply to orientation flights.

(3) Nonlocal travel. (i) Requests for nonlocal travel will be submitted to the Chief of Information, who will forward them with his recommendations to the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs), as appropriate.

(ii) When the proposed travel is for news coverage of a major emergency nature and the coverage will be impaired or delayed, to the serious detriment of the interests of the Department of Defense, if military transportation is not provided, requests for such travel will be submitted to the Chief of Information, who will forward the request—if approved—to the Assistant Secretary of Defense (Public Affairs). The most expeditious means (including telephone) will be used by commands requesting such emergency travel. Justification will include both the public affairs purpose and the necessity for military carriers.

(4) Travel between the U.S. and overseas area.

(i) The Chief of Naval Operations may authorize military transportation for correspondents in unusual circumstances, upon recommendations of the Chief of Information and the Defense Department.

(ii) Requests for government transportation to cover specific assignments overseas should be made at least three weeks prior to the date required and should be addressed to the Assistant Secretary of Defense (Public Affairs) via the Chief of Information or Unified Commander, as appropriate. The requests should include:

(A) A statement that the correspondent is a full-time employee, or has a

specific assignment, and that the trip is for the purpose of news gathering.

(B) Appropriate date of entry into area, port of entry, method of travel, proposed duration of visit and travel termination date.

(C) Assurance that the correspondent will observe currency control regulations, and sponsoring agency will guarantee financial obligations incurred.

(5) Embarkation of male correspondents between ports within CONUS.

(i) Male correspondents may be embarked in naval ships for passage between ports within the area of a single Fleet command for the purpose of news gathering at the discretion of the Sea Frontier Commander, Commandants of the Naval Districts, the Chief of naval Air Training, Fleet, Force and Type commanders and flag officers afloat who have been delegated authority to arrange directly with appropriate Fleet, Force and Type commanders for embarkation of civilians on a local cruise basis.

(ii) Invitational travel orders may be issued.

(6) Embarkation of female correspondents in naval vessels.

(i) Privileges equal to those given male correspondents will be accorded female correspondents whenever practicable.

(ii) Female correspondents may not be embarked overnight in a naval ship without prior approval of the appropriate Fleet Commander-in-Chief. This authority may be delegated to the numbered Fleet Commanders.

(7) Travel in ships of the Military Sealift Command. Correspondents may be carried in ships of the Military Sealift Command on either a space-required or space-available basis when travel is in the best interests of the Navy or the Department of Defense.

(i) Space-available travel will be used when practicable. A nominal charge is made by the Military Sealift Command and must be borne by the correspondents.

(ii) Space-required travel may be authorized when sufficiently in the interest of the Navy, and the charge may be borne by the Navy.

(iii) In either case, determination of Navy interests will be made by the Chief of Information, guided by the transportation policy of the Chief of Naval Operations, whose approval of such embarkation is required.

(iv) Requests for such travel will be submitted to the Chief of Information, who will coordinate with the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs), as appropriate.

(8) Point to point transportation within the continental United States in naval aircraft other than those operated by the Military Airlift Command.

(i) SECNAVINST 4630.2A contains guidance for travel in military aircraft other than those operated by the Military Airlift Command.

(ii) Naval activities desiring to arrange such transportation will address requests via the chain of command to the operational command of the lowest echelon which has been delegated authority to approve such requests.

(iii) Upon approval of such a request, the naval activity sponsoring the correspondent shall:

(A) Prepare travel orders.

(B) Ensure that any waiver forms, as may be required by governing directives, are executed.

(9) Embarkation of news media representatives of foreign citizenship:

(i) Requests from foreign news media representatives to cruise with units of the U.S. Navy are usually made to the nearest U.S. military installation known to the correspondent, and are often not made in the proper chain of command to the Fleet Commander unless authorized to effect arrangements for an underway cruise.

(A) if the request is received by a command which is not a subordinate of the Fleet Commander concerned, it will be forwarded to the U.S. Naval Attache assigned to the foreign newsman's country. The Attache will then forward the request to the appropriate Fleet Commander, with his recommendations and the result of a brief background check on the newsman and his employer.

(B) If the request is received by a subordinate of the appropriate Fleet Commander, it may be forwarded directly to the latter, but the U.S. Naval

Attache in the newsman's country will be given the opportunity to comment on the proposed embarkation.

(ii) Naval commands should not introduce an embarked third-party (i.e., a foreign media representative) into a foreign country other than his own without first obtaining appropriate clearance from the country to be visited. Approval for entry should be forwarded via appropriate command channels to the cognizant U.S. Naval Attache.

(10) Security considerations.

(i) No media representative known to be affiliated with a group advocating the overthrow of the U.S. government will be permitted aboard naval ships or stations.

(ii) If security review is directed, the reason will be made clear to the correspondent prior to embarkation. News media people refusing to agree to observe security regulations may have their privileges suspended. Failure to observe security regulations will be reported to CHINFO and interested commands.

(d) *Transportation of other civilians.* (1) Although groups normally provide their own transportation to Navy commands, Navy transportation may be authorized when:

(i) Commercial transport is not available.

(ii) A professional group visit has been solicited by the Navy, such as participants in the Naval Academy Information Program ("Blue and Gold") or educators invited to an Aerospace Education Workshop.

(2) Requests for nonlocal transportation under the above circumstances will be made to the Chief of Naval Operations.

(3) Carrier-on-board-delivery (COD) flights and helicopters flights to ships are considered local transportation.

(4) When units or areas of a Unified Command are involved in the public affairs program in connection with which travel authorization is requested by a Navy command which is not a component of the Unified Command concerned, coordination will be effected by the host command, through command channels, via the Chief of Information, to the Assistant Secretary of Defense (Public Affairs), who—as appropriate—will consult with the Unified Commander concerned.

(e) *Special programs.* (1) Cruises are discussed in Chapter 6, section 0604, para. 1 of the Navy Public Affairs Regulations.

(2) Embarkation of news media representatives, especially on operations and exercises, is discussed in Chapter 4, section 0405, paragraph 4 of the Navy Public Affairs Regulations.

(3) Other programs subject to special requirements or which have had exceptions authorized for them include:

(i) Naval Air Training Command Civilian Orientation Cruise Program, conducted by the Chief of Naval Air Training.

(ii) Joint Civilian Orientation Conference, conducted by the Assistant Secretary of Defense (Public Affairs).

(iii) Orientation flights in government aircraft, conducted in accordance with OPNAVINST 37107H.

(iv) Space-available air transportation may be provided Navy League members if they are invited to accompany a flag officer attending a Navy League convention or regional meeting and if the trip is economically justifiable, based on military travel considerations and not community relations or public affairs reasons. Approval in each instance will be obtained in advance from the Chief of Naval Operations.

(v) Air transportation for the Naval Sea Cadet Corps of the Navy League.

(A) Flights must be in Navy multiengine, transport type craft.

(B) Point-to-point flights on a space-required basis are governed by an annual quota set by the Chief of Naval Operations. Space-available transportation is authorized and will not be charged against this quota if it will not result in delays of takeoffs or a change in the itinerary planned for the primary mission.

(C) Flights must not interfere with operational commitments or training or results in additional expense to the government.

(D) This transportation is not available to other youth programs, including others sponsored by the Navy League.

(f) *Other instructions on transportation of non-Navy civilians.* Details on

policy, procedures, and the transportation of certain categories of people will be found in OPNAVINST 5720.2G and DOD Directive 4515.13.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.37 Public Affairs and Public Service Awards.

(a) *General.* (1) A number of public service awards are presented by the Department of Defense and the Navy to business and civic leaders, scientists and other nongovernment civilians. Other awards—military and civilian—are presented to members of the naval establishment.

(2) These awards are of public affairs interest in the locale where they are presented and also in the home towns of those who receive them.

(b) *Department of Defense awards.* (1) The Department of Defense Medal for Distinguished Public Service is presented to individuals. The Department of Defense Meritorious Award honors organizations.

(2) Details, including nominating procedures, are given in SECNAVINST 5061.12.

(c) *Secretary of the Navy awards.* (1) The following awards are presented by the Secretary of the Navy: The Navy Distinguished Public Service Award and Navy Meritorious Public Service Citation to individuals; the Navy Certificate of Commendation to members of special committees and groups; and the Navy Certificate of Merit to organizations and associations.

(2) Details are given in SECNAVINST 5061.12.

(3) Nominations for awards to military personnel are considered by the Board of Decorations and Medals, in accordance with SECNAVINST 1650.24A.

(4) Nominations for honorary awards to Department of the Navy civilian employees are considered by the Distinguished Civilian Service Awards Panel. (See Civilian Manpower Management Instruction 451.)

(d) *Chief of Information awards.* (1) Certificate of Public Relations Achievement.

(i) This certificate is signed by the Chief of Information. It honors individuals who are not Navy employees, corporations, or associations.

(ii) It was established to fill the need for a civilian award for public relations achievements which, while not meeting the criteria for public service awards presented by the Secretary of the Navy, are of such Navy-wide significance as to merit recognition at the Department level. Examples of these achievements might be a particularly well done feature article about the Navy in a nationally read newspaper or an outstanding contribution to a locally sponsored event, which ultimately gave national or regional recognition to the Navy.

(iii) The achievement for which the certificate is given shall meet the following criteria:

(A) Contribute to accomplishment of the public information objectives of the Navy.

(B) Be the result of a single outstanding project or program.

(C) Have been accomplished within one year of the date of the official letter of nomination.

(iv) Nominations will be submitted through appropriate administrative channels to the Chief of Information, and will include a description of the service rendered, a statement of its relevance to the accomplishment of the public affairs objectives of the Navy and a draft of the recommended citation. To avoid possible embarrassment, nominations shall be marked "For Official Use Only" and safeguarded until final action has been taken.

(2) CHINFO Merit Awards. (i) These awards, or certificates, are presented quarterly to Navy publications and broadcasts considered to be outstanding or to have shown improvement in meeting professional standards of journalism.

(ii) Publications and broadcasts eligible are those which inform the reader concerning aspects of service life or related matters which contribute to the well-being of naval personnel, their dependents, and civilian employees of the Navy. Civilian enterprise periodicals are included if produced for the exclusive use of a naval installation.

(iii) Nominations are made in two ways:

(A) Selection during regular review periodicals and broadast air-checks received by the Internal Relations Activity.

(B) Nominations from the field. Such nominations are informal and may be made by the officer-in-charge, publications editor, broadcast station manager, or public affairs officer to the chief of Information, Navy Department, Washington, DC 20350 (ATTN: OP-0071).

(3) Other awards pertaining to public affairs/internal relations.

(i) Silver Anvil award is given by the Public Relations Society of America for outstanding public relations programs carried out during the preceding year. Entry blanks and details may be obtained by writing directly to Public Relations Society of America, 845 Third Ave., New York, NY 10022. All Navy entries will be forwarded via the Chief of Information.

(ii) Freedom Foundation Awards of cash and medals are annually given to service personnel for letters on patriotic themes. Details are carried in ship and station publications, or may be obtained by writing to Freedom Foundations, Valley Forge, PA 19481.

(iii) Thomas Jefferson Awards are the prizes in an annual interservice competition sponsored by civilian media through the Department of Defense's Office of Information for the Armed Forces. The contest is open to all Armed Forces media—broadcast and print. Details can be obtained by writing to Office of Information, Department of the Navy, Washington, DC 20350.

(iv) Navy League Awards. Several annual awards are presented to naval personnel and civilians who have made a notable contribution to the importance of seapower. The awards are for inspirational leadership, scientific and technical progess, operational competence, literary achievement, etc. Nominations should be forwarded directly to Board of Awards, Navy League of the United States, 818 18th St., NW., Washington, DC 20006.

(v) Nonofficial awards to outstanding Navy students or training units.

(A) Various civilian organizations and private individuals have established awards to be presented to outstanding training units or naval students.

(B) Requests to establish an award for students in the Naval Air Training program should be forwarded to the Chief of Naval Air Training.

(C) Requests to establish an award which will involve more than one school (other than the Naval Air Training Program) will be forwarded to the Chief of Naval Personnel.

(D) All other cases may be decided by the Navy authority at the school concerned.

(E) Directives in the 5061, 1650 and 3590 series issued by pertinent authorities may provide further guidance in individual cases.

(vi) Awards established by a command to honor non-Navy civilians.

(A) Examples of such awards are "Good Neighbor" or "Honorary Crew Member" certificates.

(B) Established to honor persons who have been helpful to the command, they are a valuable community relations program. They should not be award to persons or organizations with which the command is associated in a commercial or governmental business capacity.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

SUBCHAPTER B—NAVIGATION

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

Sec.

706.1 Purpose of regulations.
706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.
706.3 Exemptions by the Secretary of the Navy under Executive Order 11964.

AUTHORITY: Executive Order 11964 and 33 U.S.C. 1605, unless otherwise noted.

§ 706.1 Purpose of regulations.

(a) All ships are warned that, when U.S. naval vessels are met in international waters, certain navigational lights and sound-signalling appliances of some naval vessels may vary from the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (Senate Executive W. 93d Cong., 1st Sess.), as to number position, range, or arc of visibility of lights, as well as to the disposition and characteristics of sound-signalling appliances. These differences are necessitated by reason of the special construction or purpose of the naval ships. An example is the aircraft carrier where the two masthead lights are, in most instances, on the island superstructure considerably displaced from the center or keel line of the vessel when viewed from ahead, and the sidelights are at the forward end of the axial flight deck. Certain other naval vessels cannot comply with the horizontal separation requirements for masthead lights, and the two masthead lights on even large naval vessels will thus appear to be crowded together when viewed from a distance. Naval vessels may also have unorthodox navigational light arrangements or characteristics when seen either underway or at anchor.

(b) Naval vessels may also be expected to display certain other lights. These lights include, but are not limited to, different colored rotating beacons, different colored fixed and rotary wing aircraft landing signal lights, red aircraft warning lights, and red contour approach lights on replenishment-type ships. These lights may be shown in combination with the navigational lights.

(c) During peacetime naval maneuvers, naval ships, alone or in company, may also dispense with showing any lights, though efforts will be made to display lights on the approach of shipping.

(d) Executive Order 11964 of January 19, 1977, and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972, as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, shall not apply to a vessel of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel to comply fully with the provisions without interfering with the special function of the vessel.

(e) Executive Order 11964 also provides that the Secretary of the Navy is authorized to exempt, in accordance with Rule 38 of the International Regulations for preventing Collisions at Sea, 1972, any vessel, or class of vessels, the keel of which is laid, or which is at a corresponding stage of construction, before July 15, 1977, from full compliance with the International Regulations, provided that such vessel, or class of vessels, complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960.

(f) This part consolidates and codifies certifications and exemptions granted by the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605. It has been determined that, because of their special construction or purpose, the vessels and classes of vessels listed in this part cannot comply fully with all of the requirements of the International Regulations for Preventing Collisions at Sea, 1972.

[42 FR 36434, July 14, 1977, as amended at 42 FR 48876, Sept. 26, 1977; 45 FR 43165, June 26, 1980]

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

The Secretary of the Navy hereby finds and certifies that each vessel listed in this section is a naval vessel of special construction or purpose, and that, with respect to the position of the navigational lights listed in this section, it is not possible to comply fully with the requirements of the provisions enumerated in the International Regulations for Preventing Collisions at Sea, 1972, without interfering with the special function of the vessel. The Secretary of the Navy further finds and certifies that the navigational lights in this section are in the closest possible compliance with the applicable provisions of the International Regulations for Preventing Collisions at Sea, 1972.

Table One

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS ALACRITY	AG-520	4.3
USS ASSURANCE	AG-521	4.3
USS PLAINVIEW	AGEH-1	4.3
USS DOLPHIN	AGSS-555	0.8
USS TANG	AGSS-563	3.4
USS OLIVER HAZARD PERRY	FFG 7	1.6
USS MC INERNY	FFG 8	1.6
USS WADSWORTH	FFG 9	1.6
USS DUNCAN	FFG 10	1.6
USS CLARK	FFG 11	1.6
USS GEORGE PHILIP	FFG 12	1.6
USS SAMUEL ELIOT MORISON	FFG 13	1.6
USS SIDES	FFG 14	1.6
USS ESTOCIN	FFG 15	1.6
USS SPRAGUE	FFG 16	1.6
USS ANTRIM	FFG 20	1.6
USS FAHRION	FFG 22	1.6
USS LEWIS B. FULLER	FFG 23	1.6
USS JACK WILLIAMS	FFG 24	1.6
USS COPELAND	FFG 25	1.6
USS GALLERY	FFG 26	1.6
USS BOONE	FFG 28	1.6
USS STEPHEN W. GROVES	FFG 29	1.6
USS JOHN L. HALL	FFG 32	1.6
USS ANTELOPE	PG-86	2.3
USS READY	PG-87	2.3
USS TACOMA	PG-92	2.3
USS WELCH	PG-93	2.3

Table One—Continued

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS GRAND RAPIDS	PG-98	2.3
USS DOUGLAS	PG-100	2.3
USS IWO JIMA	LPH-2	2.9
USS OKINAWA	LPH-3	3.2
USS GUADALCANAL	LPH-7	3.0
USS GUAM	LPH-9	3.3
USS TRIPOLI	LPH-10	3.3
USS NEW ORLEANS	LPH-11	3.3
USS INCHON	LPH-12	3.0
USS CONSTANT	MSO-427	3.5
USS DASH	MSO-428	3.3
USS DETECTOR	MSO-429	3.5
USS DIRECT	MSO-430	3.2
USS DOMINANT	MSO-431	3.2
USS ENGAGE	MSO-433	3.6
USS ENHANCE	MSO-437	3.5
USS ESTEEM	MSO-438	3.4
USS EXCEL	MSO-439	3.3
USS EXPLOIT	MSO-440	3.3
USS EXULTANT	MSO-441	3.2
USS FEARLESS	MSO-442	3.2
USS FIDELITY	MSO-443	3.2
USS FORTIFY	MSO-446	3.6
USS ILLUSIVE	MSO-448	3.4
USS IMPERVIOUS	MSO-449	3.8
USS IMPLICIT	MSO-455	3.7
USS INFLICT	MSO-456	3.5
USS PLUCK	MSO-464	3.5
USS CONQUEST	MSO-488	3.4
USS GALLANT	MSO-489	3.2
USS LEADER	MSO-490	3.3
USS PLEDGE	MSO-492	3.4
USS ADROIT	MSO-509	3.5
USS AFFRAY	MSO-511	3.5
	NR-1	2.7
USS TANG	SS-563	3.35
USS WAHOO	SS-565	3.35
USS TROUT	SS-566	3.65
USS GUDGEON	SS-567	3.35
USS SAILFISH	SS-572	3.96
USS DARTER	SS-576	0.61
USS GRAYBACK	SS-574	4.27
USS BONEFISH	SS-582	1.54
USS NAUTILUS	SSN-571	3.05
USS SEAWOLF	SSN-575	3.35
USS SKATE	SSN-578	1.22
USS SWORDFISH	SSN-579	0.61
USS SARGO	SSN-583	0.61
USS SEADRAGON	SSN-584	0.61
USS SKIPJACK	SSN-585	1.22
USS SCAMP	SSN-588	1.52
USS SCULPIN	SSN-590	1.22
USS SHARK	SSN-591	1.30
USS SNOOK	SSN-592	1.22
USS PERMIT	SSN-594	2.74
USS PLUNGER	SSN-595	2.74
USS BARB	SSN-596	2.70
USS TULLIBEE	SSN-597	0.90
USS POLLACK	SSN-603	3.96
USS HADDO	SSN-604	3.96
USS JACK	SSN-605	4.57
USS TINOSA	SSN-606	3.96
USS DACE	SSN-607	2.74

Table One—Continued

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS GUARDFISH	SSN-612	4.27
USS FLASHER	SSN-613	4.27
USS GREENLING	SSN-614	4.27
USS GATO	SSN-615	4.20
USS HADDOCK	SSN-621	3.05
USS STURGEON	SSN-637	2.44
USS WHALE	SSN-638	2.44
USS TAUTOG	SSN-639	2.44
USS GRAYLING	SSN-646	2.44
USS POGY	SSN-647	2.40
USS ASPRO	SSN-648	2.40
USS SUNFISH	SSN-649	2.40
USS PARGO	SSN-650	2.40
USS QUEENFISH	SSN-651	1.52
USS PUFFER	SSN-652	2.40
USS RAY	SSN-653	1.52
USS SANDLANCE	SSN-660	2.40
USS LAPON	SSN-661	2.40
USS GURNARD	SSN-662	1.52
USS HAMMERHEAD	SSN-663	2.40
USS SEA DEVIL	SSN-664	2.40
USS GUITARRO	SSN-665	2.40
USS HAWKBILL	SSN-666	1.52
USS BERGALL	SSN-667	2.40
USS SPADEFISH	SSN-668	2.40
USS SEAHORSE	SSN-669	2.40
USS FINBACK	SSN-670	2.40
USS NARWHAL	SSN-671	2.74
USS PINTADO	SSN-672	1.52
USS FLYING FISH	SSN-673	2.40
USS TREPANG	SSN-674	2.40
USS BLUEFISH	SSN-675	2.40
USS BILLFISH	SSN-676	2.40
USS DRUM	SSN-677	1.52
USS ARCHERFISH	SSN-678	2.40
USS SILVERSIDES	SSN-679	2.40
USS WILLIAM H BATES	SSN-680	2.40
USS BATFISH	SSN-681	2.40
USS TUNNY	SSN-682	2.40
USS PARCHE	SSN-683	2.40
USS CAVALLA	SSN-684	2.40
USS GLENARD P LIPSCOMB	SSN-685	3.20
USS MENDEL RIVERS	SSN-686	2.40
USS RICHARD B RUSSELL	SSN-687	2.40
USS LOS ANGELES	SSN-688	6.10
USS BATON ROUGE	SSN-689	6.10
USS PHILADELPHIA	SSN-690	6.10
USS MEMPHIS	SSN-691	6.10
USS OMAHA	SSN-692	6.10
USS CINCINNATI	SSN-693	3.49
USS GROTON	SSN-694	3.45
USS BIRMINGHAM	SSN-695	3.49
USS NEW YORK CITY	SSN-696	3.49
USS INDIANAPOLIS	SSN-697	3.49
USS BREMERTON	SSN-698	3.49
USS JACKSONVILLE	SSN-699	3.35
USS DALLAS	SSN-700	3.5
USS LA JOLLA	SSN-701	3.5
USS PHOENIX	SSN-702	3.5
USS BOSTON	SSN-703	3.5
USS SAN FRANCISCO	SSN 711	3.5
USS ATLANTA	SSN-712	3.5
USS HOUSTON	SSN-713	3.5
USS GEORGE WASHINGTON	SSBN-598	4.11
USS PATRICK HENRY	SSBN-599	4.11
USS THEODORE ROOSEVELT	SSBN-600	4.11
USS ROBERT E LEE	SSBN-601	4.11
USS ABRAHAM LINCOLN	SSBN-602	4.11
USS ETHAN ALLEN	SSBN-608	3.73
USS SAM HOUSTON	SSBN-609	3.73
USS THOMAS A EDISON	SSBN-610	3.73
USS JOHN MARSHALL	SSBN-611	3.73
USS LAFAYETTE	SSBN-616	3.58
USS ALEXANDER HAMILTON	SSBN-617	3.58
USS THOMAS JEFFERSON	SSBN-618	3.73
USS ANDREW JACKSON	SSBN-619	3.58
USS JOHN ADAMS	SSBN-620	3.58
USS JAMES MONROE	SSBN-622	3.58
USS NATHAN HALE	SSBN-623	3.58
USS WOODROW WILSON	SSBN-624	3.58
USS HENRY CLAY	SSBN-625	3.58
USS DANIEL WEBSTER	SSBN-626	3.58
USS JAMES MADISON	SSBN-627	3.58
USS TECUMSEH	SSBN-628	3.58
USS DANIEL BOONE	SSBN-629	3.58
USS JOHN C CALHOUN	SSBN-630	3.58
USS ULYSSES S GRANT	SSBN-631	3.58
USS VON STEUBEN	SSBN-632	3.58
USS CASIMIR PULASKI	SSBN-633	3.58
USS STONEWALL JACKSON	SSBN-634	3.58
USS SAM RAYBURN	SSBN-635	3.58
USS NATHANAEL GREENE	SSBN-636	3.40
USS BENJAMIN FRANKLIN	SSBN-640	3.58
USS SIMON BOLIVAR	SSBN-641	3.60
USS KAMEHAMEHA	SSBN-642	3.58
USS GEORGE BANCROFT	SSBN-643	3.60
USS LEWIS & CLARK	SSBN-644	3.60
USS JAMES K POLK	SSBN-645	3.60
USS GEORGE C MARSHALL	SSBN-654	3.60
USS HENRY L STIMSON	SSBN-655	3.60
USS GEORGE WASHINGTON CARVER	SSBN-656	3.60
USS FRANCIS SCOTT KEY	SSBN-657	3.60
USS MARIANO G VALLEJO	SSBN-658	3.60
USS WILL ROGERS	SSBN-659	3.60
USS OHIO	SSBN-726	3.70
USS MICHIGAN	SSBN-727	3.70
USS GEORGIA	SSBN-729	3.70
AALC JEFF(B)	ACV	7.21

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Table Two

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS LEXINGTON	CVT-16	12.2	1.5	2	8.2	2	0.8	113.4	13.7
USS MIDWAY	CV-41	19.0	0.3	2	6.4	2	0.6	117.0	15.8
USS CORAL SEA	CV-43	18.9	0.16	2	6.2	2	0.16	116.7	19.9
USS FORRESTAL	CV-59	26.2	0.6	2	6.7	2	1.2	128.0	22.2
USS SARATOGA	CV-60	26.4	0.9	2	7.6	2	0.9	132.3	22.3
USS RANGER	CV-61	25.9	0.6	2	7.3	2	0.8	132.9	24.5
USS INDEPENDENCE	CV-62	26.4	0.9	2	8.4	2	1.1	132.9	21.3
USS KITTY HAWK	CV-63	28.0	0.7	2	6.9	2	1.2	175.6	24.8
USS CONSTELLATION	CV-64	28.9	0.4	2	6.7	2	0.9	175.6	21.9
USS ENTERPRISE	CVN-65	23.6	0.6	2	5.9	2	0.9	176.0	23.6
USS AMERICA	CV-66	28.6	0.9	2	5.7	2	0.8	164.6	22.4
USS JOHN F KENNEDY	CV-67	28.6	1.3	2	6.4	2	0.9	160.9	22.9
USS NIMITZ	CVN-68	28.6	0.2	2	9.0	2	0.6	189.0	22.0
USS DWIGHT D EISENHOWER	CVN-69	28.6	0.2	2	9.0	2	0.6	189.0	22.0
USS TARAWA	LHA-1	10.0	—	1	—	1	2.4	71.0	—
USS SAIPAN	LHA-2	10.0	—	1	—	1	2.4	71.0	—
USS BELLEAU WOOD	LHA-3	10.0	—	—	—	—	2.7	72.4	—
USS NASSAU	LHA-4	10.0	—	—	—	—	2.7	72.4	—
USS PELELIU	LHA-5	10.0	4—	—	—	—	2.6	72.4	—
AALC JEFF(B) [1]	ACV	4.01							
USS IWO JIMA	LPH-2	10.6	—	1	2.1	2	1.1	61.0	—
USS OKINAWA	LPH-3	10.6	—	1	2.2	2	1.3	61.0	—
USS GUADALCANAL	LPH-7	10.6	—	1	2.5	2	0.2	61.0	—
USS GUAM	LPH-9	10.6	—	1	2.0	2	0.2	48.8	—
USS TRIPOLI	LPH-10	10.6	—	1	2.2	2	0.4	47.5	—
USS NEW ORLEANS	LPH-11	10.6	—	1	2.2	2	0.5	50.0	—
USS INCHON	LPH-12	10.6	—	1	2.2	2	0.4	47.5	—
USS PENGASIUS	PHM-1	—	—	—	—	—	—	8.4	—
USS TAURUS	PHM-3	—	—	—	—	—	—	8.4	—
USS AQUILA	PHM-4	—	—	—	—	—	—	8.4	—

[1] On AALC JEFF(B) the masthead light is located 4.01 meters athwartship to port of centerline, at frame five, 4.79 meters above the main deck.

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Table Three

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS DOLPHIN	AGSS-555	227.5°	119°	191°	2.1	10.8	1.8	0.5 above
USS TANG	AGSS-563	232°	116°	252°	3.1	3.1	2.2	0.5 above
USS WAHOO	SS-565	232°	116°	252°	3.1	14.3	2.3	0.5 above
USS TROUT	SS-566	226°	115°	252°	2.9	13.7	1.9	1.5 below
USS GUDGEON	SS-567	232°	115°	252°	2.9	13.7	1.9	0.7 above
USS SAILFISH	SS-572	290°	114°	252°	2.4	10.7	2.0	0.8 above
USS SALMON	SS-573	228°	115°	252°	2.4	10.7	2.0	1.5 below
USS GREYBACK	SS-574	226°	115°	252°	3.1	9.8	4.0	2.1 above
USS DARTER	SS-576	226°	116°	252°	2.4	10.7	1.0	1.1 above
USS BARBEL	SS-580	230°	117°	252°	3.4	15.2	2.7	same height
USS BLUEBACK	SS-581	230°	117°	252°	3.4	15.2	2.7	same height
USS BONEFISH	SS-582	230°	117°	252°	3.4	15.2	2.7	same height
USS NAUTILUS	SSN-571	226°	113°	252°	3.1	16.7	1.8	1.5 below
USS SEAWOLF	SSN-575	226°	113°	252°	2.7	16.5	1.9	2.5 below
USS SKATE	SSN-578	230°	113°	252°	2.7	12.5	1.8	2.4 below
USS SWORDFISH	SSN-579	230°	113°	252°	2.7	12.5	1.8	2.4 below
USS SARGO	SSN-583	228°	113°	252°	2.7	12.5	1.8	2.3 below
USS SEADRAGON	SSN-584	228°	113°	252°	2.7	12.5	1.8	2.3 below
USS SKIPJACK	SSN-585	250°	113°	252°	4.0	33.5	2.1	0.4 below
USS SCAMP	SSN-588	232°	113°	252°	4.0	33.5	2.1	0.8 below
USS SCULPIN	SSN-590	230°	113°	252°	4.0	33.5	2.1	0.5 below
USS SHARK	SSN-591	228°	113°	252°	4.0	33.5	2.1	0.5 below
USS SNOOK	SSN-592	228°	113°	252°	4.0	33.5	2.1	1.3 below
USS PERMIT	SSN-594	230°	116°	252°	4.1	37.8	3.1	1.9 below
USS PLUNGER	SSN-595	226°	114°	252°	4.1	37.8	3.1	1.7 below
USS BARB	SSN-596	238°	115°	252°	4.1	37.8	3.1	1.5 below
USS TULLIBEE	SSN-597	226°	113°	252°	2.9	32.0	2.7	2.3 below
USS POLLACK	SSN-603	228°	114°	252°	4.1	37.8	3.1	1.5 below
USS HADDO	SSN-604	226°	114°	252°	4.1	37.8	3.1	1.5 below
USS JACK	SSN-605	226°	113°	252°	4.1	37.8	3.1	1.5 below
USS TINOSA	SSN-606	228°	114°	252°	4.1	37.8	3.1	1.5 below
USS DACE	SSN-607	226°	114°	252°	4.1	37.8	3.1	1.5 below
USS GUARDFISH	SSN-612	240°	114°	252°	4.1	37.8	3.1	1.5 below
USS FLASHER	SSN-613	240°	114°	252°	4.1	37.8	3.1	1.5 below
USS GREENLING	SSN-614	236°	114°	252°	4.1	37.8	3.1	1.5 below
USS GATO	SSN-615	232°	114°	252°	4.1	37.8	3.1	1.5 below
USS HADDOCK	SSN-621	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS STURGEON	SSN-637	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS WHALE	SSN-638	226°	113°	252°				

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Table Three—Continued

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS TAUTOG	SSN-639	226°	113°	252°	3.8	5.2	3.4	1.4 below
USS GRAYLING	SSN-646	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS POGY	SSN-647	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS ASPRO	SSN-648	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS SUNFISH	SSN-649	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS PARGO	SSN-650	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS QUEENFISH	SSN-651	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS PUFFER	SSN-652	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS RAY	SSN-653	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS SANDLANCE	SSN-660	226°	113°	252°	3.8	5.2	3.4	1.4 below
USS LAPON	SSN-661	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS GURNARD	SSN-662	232°	116°	252°	3.8	5.2	3.4	1.4 below
USS HAMMERHEAD	SSN-663	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS SEA DEVIL	SSN-664	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS GUITARRO	SSN-665	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS HAWKBILL	SSN-666	232°	113°	252°	3.8	5.2	3.4	1.4 below
USS BERGALL	SSN-667	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS SPADEFISH	SSN-668	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS SEAHORSE	SSN-669	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS FINBACK	SSN-670	234°	114°	252°	3.8	5.2	3.4	1.4 below
USS NARWHAL	SSN-671	228°	113°	252°	3.8	5.2	2.0	1.4 below
USS PINTADO	SSN-672	234°	120°	252°	3.8	5.2	3.4	1.4 below
USS FLYING FISH	SSN-673	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS TREPANG	SSN-674	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS BLUEFISH	SSN-675	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS BILLFISH	SSN-676	234°	114°	252°	3.8	5.2	3.4	1.4 below
USS DRUM	SSN-677	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS ARCHERFISH	SSN-678	232°	113°	252°	3.8	5.2	3.4	1.4 below
USS SILVERSIDES	SSN-679	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS WILLIAM H BATES	SSN-680	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS BATFISH	SSN-681	234°	115°	252°	3.8	5.2	3.4	1.4 below
USS TUNNY	SSN-682	234°	114°	252°	3.8	5.2	3.4	1.4 below
USS PARCHE	SSN-683	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS CAVALLA	SSN-684	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS GLENARD P LIPSCOMB	SSN-685	244°	114°	252°	3.8	5.2	3.4	1.4 below
USS L MENDEL RIVERS	SSN-686	236°	113°	252°	3.8	5.2	3.4	1.4 below
USS RICHARD B RUSSELL	SSN-687	236°	114°	252°	3.8	5.2	3.4	1.3 below
USS LOS ANGELES	SSN-698	236°	115°	252°	4.2	6.1	2.0	1.6 below
USS BATON ROUGE	SSN-689	234°	115°	252°	4.2	6.1	2.0	1.6 below

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Table Three—Continued

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS PHILADELPHIA	SSN-690	238°	115°	252°	4.2	6.1	2.0	1.6 below
USS MEMPHIS	SSN-691	236°	115°	252°	4.3	6.1	2.0	1.6 below
USS OMAHA	SSN-692	236°	115°	252°	4.2	6.1	2.0	1.6 below
USS CINCINNATI	SSN-693			209°	4.3	6.1	3.4	1.6 below
USS GROTON	SSN-694	226°55′	118°37′	219°	4.3	6.6	3.5	1.7 below
USS BIRMINGHAM	SSN-695	—	—	209°	4.3	6.1	3.4	1.7 below
USS NEW YORK CITY	SSN-696	—	—	209°	4.3	6.1	3.4	1.7 below
USS INDIANAPOLIS	SSN-697			209°	4.3	6.1	3.4	1.7 below
USS BREMERTON	SSN-698			209°	4.2	6.1	3.5	1.7 below
USS JACKSONVILLE	SSN-699			211°	4.2	6.1	3.5	1.7 below
USS DALLAS	SSN-700				4.1	6.5	3.4	1.7 below
USS LA JOLLA	SSN-701				4.2	6.1	3.5	1.7 below
USS PHOENIX	SSN-702				4.2	6.1	3.5	1.7 below
USS BOSTON	SSN-703				4.2	6.2	3.8	1.7 below
USS SAN FRANCISCO	SSN-711				4.1	6.5	3.4	1.7 below
USS ATLANTA	SSN-712				4.3	6.1	3.4	1.6 below
USS HOUSTON	SSN-713			209°	4.3	6.1	3.4	1.7 below
USS GEORGE WASHINGTON	SSBN-598	240°	118°	255°	3.8	46.0	2.1	0.6 below
USS PATRICK HENRY	SSBN-599	238°	118°	252°	3.8	46.0	2.1	0.4 below
USS THEODORE ROOSEVELT	SSBN-600	240°	115°	252°	3.8	46.0	2.1	1.2 below
USS ROBERT E LEE	SSBN-601	242°	113°	252°	3.8	46.0	2.1	0.5 below
USS ABRAHAM LINCOLN	SSBN-602	226°	114°	252°	3.8	39.3	2.1	same height
USS ETHAN ALLEN	SSBN-608	226°	120°	252°	3.8	7.6	2.1	1.4 above
USS SAM HOUSTON	SSBN-609		114°	252°	3.8	7.6	2.1	1.7 above
USS THOMAS A EDISON	SSBN-610	230°	115°	252°	3.8	7.6	2.1	1.2 above
USS JOHN MARSHALL	SSBN-611	228°	113°	252°	3.8	7.6	2.1	0.9 above
USS LAFAYETTE	SSBN-616	236°	113°	252°	3.8	7.3	2.0	1.2 above
USS ALEXANDER HAMILTON	SSBN-617	232°	114°	252°	3.8	7.3	2.0	1.1 above
USS THOMAS JEFFERSON	SSBN-618	230°	113°	252°	3.8	7.6	2.1	1.8 above
USS ANDREW JACKSON	SSBN-619	240°	113°	252°	3.8	7.3	2.0	1.8 above
USS JOHN ADAMS	SSBN-620	236°	115°	252°	3.8	7.3	2.0	1.0 above
USS JAMES MONROE	SSBN-622	230°	114°	252°	3.8	7.3	2.0	1.2 above
USS NATHAN HALE	SSBN-623	226°	115°	252°	3.8	7.3	2.0	1.3 above
USS WOODROW WILSON	SSBN-624	226°	115°	252°	3.8	7.3	2.0	1.0 above
USS HENRY CLAY	SSBN-625	236°	117°	252°	3.8	7.3	2.0	1.0 above
USS DANIEL WEBSTER	SSBN-626	236°	114°	252°	3.8	7.3	2.0	1.0 above
USS JAMES MADISON	SSBN-627	232°	113°	252°	3.8	7.3	2.0	1.6 above
USS TECUMSEH	SSBN-628	236°	114°	252°	3.8	7.3	2.0	1.0 above
USS DANIEL BOONE	SSBN-629	232°	114°	252°	3.8	7.3	2.0	1.6 above

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Table Three—Continued

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS JOHN C CALHOUN	SSBN-630	226°	113°	252°	3.8	7.3	2.0	same height
USS ULYSSES S GRANT	SSBN-631	226°	113°	252°	3.8	7.3	2.0	1.6 above
USS VON STUEBEN	SSBN-632	230°	114°	252°	3.8	7.3	2.0	1.6 above
USS CASIMIR PULASKI	SSBN-633	228°	113°	252°	3.8	7.3	2.0	1.4 above
USS STONEWALL JACKSON	SSBN-634	236°	114°	252°	3.8	7.3	2.0	1.4 above
USS SAM RAYBURN	SSBN-635	232°	113°	252°	3.8	7.3	2.0	1.6 above
USS NATHANAEL GREENE	SSBN-636	232°	113°	252°	3.8	7.3	2.0	1.6 above
USS BENJAMIN FRANKLIN	SSBN-640	230°	114°	252°	3.8	7.6	2.1	0.9 below
USS SIMON BOLIVAR	SSBN-641	234°	115°	252°	3.8	7.6	2.1	0.8 below
USS KAMEHAMEHA	SSBN-642	236°	117°	252°	3.8	7.6	2.1	same height
USS GEORGE BANCROFT	SSBN-643	234°	114°	252°	3.8	7.6	2.1	0.9 below
USS LEWIS AND CLARK	SSBN-644	230°	113°	252°	3.8	7.6	2.1	0.6 below
USS JAMES K POLK	SSBN-645	230°	114°	252°	3.8	7.6	2.1	0.9 below
USS GEORGE C MARSHALL	SSBN-654	226°	113°	252°	3.8	7.6	2.1	0.5 below
USS HENRY L STIMSON	SSBN-655	230°	114°	252°	3.8	7.6	2.1	0.6 below
USS GEORGE WASHINGTON CARVER	SSBN-656	234°	114°	252°	3.8	7.6	2.1	0.6 below
USS FRANCIS SCOTT KEY	SSBN-657	226°	113°	252°	3.8	7.6	2.1	0.3 below
USS MARIANO G VALLEJO	SSBN-658	234°	116°	252°	3.8	7.6	2.1	1.1 below
USS WILL ROGERS	SSBN-659	226°	114°	252°	3.8	7.6	2.1	0.6 below
USS OHIO	SSBN-726	225°	112.5°	209°	5.3	9.0	3.8	4.0 below
USS MICHIGAN	SSBN-727	225°	112.5°	209°	5.3	9.0	3.8	4.0 below
USS GEORGIA	SSBN-729	225°	112.5°	209°	5.3	9.0	3.8	4.0 below
NR-1	NR-1	238.5°	114°	136.5°	1.5	4.1	2.1	.....

TABLE FOUR

1. The masthead light(s) required by Rule 27(b)(iii) and the lights required by Rule 27(b)(i) for vessels restricted in their ability to maneuver will not be displayed simultaneously except for aircraft carrier types (CV, CVN, AVT, LPH and LHA). The lights required by Rule 27(b)(i) when exhibited will be so placed as to be above and clear of all other lights and obstructions. Ships conducting flight operations also may not display the stern light required by Rule 27(b)(iii).

2. The second masthead light required by Rule 23(a)(ii) and the lights and shapes required by Rules 24 and 27 are not displayed by submarines.

3. The second masthead light required by Rule 23(a)(ii) and the lights required by Rules 24, 27, and 30(d)(i) are not installed on submarines.

4. The lights required by Rule 27(b) are spaced 0.9 meters apart in lieu of the 2 meters specified in Annex I, section 2(i)(i) on the following ships:

USS ANTELOPE (PG 86)
USS READY (PG 87)

5. On mine warfare type ships the masthead lights will not always be above and clear of the minesweeping lights, as is required by Annex I, Section 2(f). The positions of the masthead lights with relation to the minesweeping lights are as follows:

Vessel	MSO No.	Relationship of forward masthead light to all minesweeping lights	Relationship of after masthead light to lower minesweeping lights	Relationship of after masthead light to upper minesweeping lights
USS CONSTANT	427	below	above	below
USS DASH	428	below	above	below
USS DETECTOR	429	below	above	below
USS DIRECT	430	below	above	below
USS DOMINANT	431	below	above	below
USS ENGAGE	433	below	above	below
USS ENHANCE	437	below	above	below
USS ESTEEM	438	below	same as	below
USS EXCEL	439	below	above	below
USS EXPLOIT	440	below	above	below
USS EXULTANT	441	below	above	below
USS FEARLESS	442	below	above	below
USS FIDELITY	443	below	above	below
USS FORTIFY	446	below	above	below
USS ILLUSIVE	448	below	above	below
USS IMPERVIOUS	449	below	above	below
USS IMPLICIT	455	below	lower than	below
USS INFLICT	456	below	above	below
USS PLUCK	464	below	above	below
USS CONQUEST	488	below	lower than	below
USS GALLANT	489	below	lower than	below
USS LEADER	490	below	above	below
USS PLEDGE	492	below	lower than	below
USS ADROIT	509	below	lower than	below
USS AFFRAY	511	below	same as	below
MSB	15	below	—	—
MSB	16	do	—	—
MSB	25	do	—	—
MSB	28	do	—	—
MSB	29	do	—	—
MSB	41	do	—	—
MSB	51	do	—	—
MSB	52	do	—	—

6. The masthead light required by Rule 23(a)(i) is not located in the forepart of the vessel on the following ships:

USS HIGH POINT (PCH1)—0.6 meters aft of amidships

USS PEGASUS (PHM 1)—3.0 meters aft of amidships

USS TAURIS (PHM 3)—3.0 meters aft of amidships

USS AQUILA (PHM 4)—3.0 meters aft of amidships

7. The arc of visibility of the after masthead light required by Rule 23(a)(ii) and Annex I, section 2(f) may be obstructed from right ahead on certain naval ships as follows:

USS SHENANDOAH (AD 26)	1° 0'
USS BRYCE CANYON (AD 27)	1° 0'
USS WICHITA (AOR 1)	1° 13'
USS KANSAS CITY (AOR 3)	1° 13'
USS SAVANNAH (AOR 4)	1° 13'
USS WABASH (AOR 5)	1° 13'
USS KALAMAZOO (AOR 6)	1° 13'
USS FULTON (AS 11)	1° 0'
USS HUNLEY (AS 31)	2° 10'
USS HOLLAND (AS 32)	3° 46'

USS KIDD (DDG 993)	0° 25.8'	USS SCOTT (DDG 995)	0° 28.8'
USS CALLAGHAN (DDG 994)	0° 28.8'	USS CHANDLER (DDG 996)	0° 28.8'

8. On the following ships the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head.

USS OLIVER HAZARD PERRY	FFG 7	USS ANTRIM	FFG 20
USS MCINERNEY	FFG 8	USS FAHRION	FFG 22
USS WADSWORTH	FFG 9	USS LEWIS B. FULLER	FFG 23
USS DUNCAN	FFG 10	USS JACK WILLIAMS	FFG 24
USS CLARK	FFG 11	USS COPELAND	FFG 25
USS GEORGE PHILIP	FFG 12	USS GALLERY	FFG 26
USS SAMUEL ELIOT MORISON	FFG 13	USS BOONE	FFG 28
USS SIDES	FFG 14	USS STEPHEN W. GROVES	FFG 29
USS ESTOCIN	FFG 15	USS JOHN L. HALL	FFG 32
USS CLIFTON SPRAGUE	FFG 16		

9. Sidelights on the following ships do not comply with Annex 1, Section 3(b):

Vessel	Number	Distance of sidelights forward of masthead light in meters	Vessel	Number	Distance of sidelights forward of masthead light in meters
USS OLIVER HAZARD PERRY.	FFG 7	2.75	USS CLIFTON SPRAGUE.	FFG 16	2.75
USS MCINERNEY	FFG 8	2.75	USS ANTRIM	FFG 20	2.75
USS WADSWORTH	FFG 9	2.75	USS FAHRION	FFG 22	2.69
USS DUNCAN	FFG 10	2.75	USS LEWIS B. FULLER.	FFG 23	2.75
USS CLARK	FFG 11	2.75	USS JACK WILLIAMS.	FFG 24	2.75
USS GEORGE PHILIP.	FFG 12	2.75	USS COPELAND	FFG 25	2.75
USS SAMUEL ELIOT MORISON.	FFG 13	2.75	USS GALLERY	FFG 26	2.75
USS SIDES	FFG 14	2.75	USS BOONE	FFG 28	2.75
USS ESTOCIN	FFG 15	2.75	USS STEPHEN W. GROVES.	FFG 29	2.75
			USS JOHN L. HALL	FFG 32	2.75

10. On USNS POWHATAN (T-ATF 166), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

11. On USNS NARRAGENSETT T-ATF 167, the masthead lights used for towing required by Rule 24 will be displayed approximately 4.95 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

12. On USNS CATAWBA (T-ATF 168), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

13. On USNS NAVAJO (T-ATF 169), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

14. On USS BIDDLE the arc of visibility of the forward masthead light may be observed through 1.4 degree of arcs of visibility at 017 and 343 degrees relative to ship's head.

15. On USNS MOHAWK (T-ATF 170), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

16. On USNS SIOUX (T-ATF 171), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

17. On the following ships the arc of visibility of the after masthead light required by Rule 23(a)(ii) may be obstructed through 0°48.6' arc of visibility at the point 349° relative to the ship's head:

USS KIDD (DDG 993)
USS CALLAGHAN (DDG 994)
USS SCOTT (DDG 995)
USS CHANDLER (DDG 996)

18. On USNS APACHE (T-ATF 172), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

19. On USS DOLPHIN (AGSS 555) the masthead light will be visible at a distance of 4.3 nautical miles and the sidelights will be visible at a distance of 2 nautical miles.

20. On USS PEGASUS (PHM 1), USS TAURUS (PHM 3), and USS AQUILA (PHM 4), two lights are installed at the same level, one fore and one aft, high on the mast to provide the closest possible compliance to the all-round anchor light visibility required by Rule 30(b) and Annex I, section 9(b).

§ 706.3 Exemptions by the Secretary of the Navy under Executive Order 11964.

The Secretary of the Navy hereby exempts, in accordance with Rule 38 of the International Regulations for Preventing Collisions at Sea, 1972, the vessels and classes of vessels listed in this section, from full compliance with the Regulations, where an exemption is allowed by, and for the periods specified in, Rule 38. The Secretary of the Navy further finds that the vessels and classes of vessels listed have had their keels laid or are in corresponding stages of construction before July 15, 1977, and that such vessels and classes of vessels comply with the requirements of the International Regulations for Preventing Collisions at Sea, 1960.

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Table Five

Vessel	Number	Forward masthead light not required, height above hull. Annex 1, sec. 2(a)(ii)(c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex 1, sec. 3(a)	Percentage horizontal separation attained
USS BELKNAP	CG26			X			X	X	21
USS KIDD	DDG993			X			X	X	44.6
USS CALLAGHAN	DDG994			X			X	X	44.6
USS SCOTT	DDG995			X			X	X	44.6
USS CHANDLER	DDG996			X			X	X	44.6

(Sec. 6, Pub. L. 95-75, 91 Stat. 309 (33 U.S.C. 1601-1608))

[42 FR 36434, July 14, 1977]

NOTE: For Federal Register citations affecting § 706.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Table One

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances in Annex III, 9 years; Rule 38(g)
USNS KINGSPORT (T-AG164)	X	X	X				X
USNS WHEELING (T-AGM 8)	X	X	X				X
USNS ARNOLD (T-AGM 9)	X	X					X
USNS VANDENBURG (T-AGM 10)	X	X					X
USNS VANGUARD (T-AGM 19)	X	X					X
USNS REDSTONE (T-AGM 20)	X	X					X
USNS RANGE SENTINEL (T-AGM 22)	X	X	X				X
USNS LYNCH (T-AGOR 7)	X	X	X				X
USNS MIZAR (T-AGOR 11)	X	X	X				X
USNS DE STEIGUER (T-AGOR 12)	X	X	X				X
USNS BARTLETT (T-AGOR 13)	X	X	X				X
USNS HAYES (T-AGOR 16)	X	X	X				X
USNS BOWDITCH (T-AGS 21)	X	X	X				X
USNS DUTTON (T-AGS 22)	X	X	X				X
USNS SILAS BENT (T-AGS 26)	X	X	X				X
USNS KANE (T-AGS 27)	X	X	X				X
USNS CHAUVENET (T-AGS 29)	X	X	X				X
USNS HARKNESS (T-AGS 32)	X	X	X				X
USNS WILKES (T-AGS 33)	X	X	X				X
USNS WYMAN (T-AGS 34)	X	X	X				X
USNS HESS (T-AGS 38)	X	X					X
USNS BROSTROM (T-AK 255)	X	X		X			X
USNS TOWLE (T-AK 240)	X	X	X				X
USNS MIRFAK (T-AK 271)	X	X	X				X
USNS BLAND (T-AK 277)	X	X	X				X
USNS NORWALK (T-AK 279)	X	X	X				X
USNS FURMAN (T-AK 280)	X	X	X				X
USNS VICTORIA (T-AK 281)	X	X	X				X
USNS MARSHFIELD (T-AK 282)	X	X	X				X
USNS COMET (T-AKR 7)	X	X		X			X
USNS METEOR (T-AKR 9)	X	X		X			X
USNS UTE (T-ATF 76)	X	X	X				X
USNS LIPAN (T-ATF 85)	X	X	X				X
USNS ATAKAPA (T-ATF 149)	X	X	X				X
USNS MOSOPELEA (T-ATF 158)	X	X	X				X
USNS RIGEL (T-AF 58)	X	X		X			X
USNS MARIAS (T-AO 57)	X	X		X			X

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Table One—Continued

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances in Annex III, 9 years; Rule 38(g)
USNS TALUGA (T-AO 62)	X	X		X			X
USNS MISPILLION (T-AO 105)	X	X		X			X
USNS NAVASOTA (T-AO 106)	X	X		X			X
USNS PASSUMPSIC (T-AO 107)	X	X		X			X
USNS PAWCATUCK (T-AO 108)	X	X		X			X
USNS WACCAMAW (T-AO 109)	X	X		X			X
USNS MISSISSINEWA (T-AO 144)	X	X		X			X
USNS MAUMEE (T-AO 149)	X	X		X			X
USNS SHOSHONE (T-AO 151)	X	X		X			X
USNS YUKON (T-AO 152)	X	X		X			X
USNS AMERICAN EXPLORER (T-AO 165)	X	X				X	X
SEALIFT CLASS (T-AO 168-176)	X	X				X	X
USNS POTOMAC (T-AO 181)	X	X					X
COLUMBIA CLASS (T-AO 182-185)	X	X					X
USNS RINCON (T-AOG77)	X	X	X				X
USNS NODAWAY (T-AOG 78)	X	X	X				X
USNS PETALUMA (T-AOG 79)	X	X	X				X
USNS NEPTUNE (T-ARC 2)	X	X	X				X
USNS AEOLUS (T-ARC 3)	X	X	X				X
USNS MYER (T-ARC 6)	X	X	X				X
T-ATF 166 class	X	X		X		X	
CV-41 Class	X	X		X		X	
CV-59 Class	X	X		X		X	
CV-63 Class	X	X		X		X	
SSBN-627 Class	X	X	X		X	X	
SSBN-640 Class	X	X	X		X	X	
SSBN-726	X	X	X				
SS-563 Class	X	X	X		X	X	
SS-572 Class	X	X	X		X	X	
USS GRAYBACK (SS-574)	X	X	X		X	X	
SS-580 Class	X	X	X		X	X	
USS NAUTILUS (SSN-571)	X	X	X		X	X	
USS SEAWOLF (SSN-575)	X	X	X		X	X	
SSN-578 Class	X	X	X		X	X	
SSN-585 Class	X	X	X		X	X	
SSN-594 Class	X	X	X		X	X	
USS TULLIBEE (SSN-597)	X	X	X		X	X	

Table One—Continued

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances In Annex III, 9 years; Rule 38(g)
SSN-637 Class	X	X	X		X	X	
USS NARWHAL (SSN-671)	X	X	X		X	X	
USS GLENARD P LIPSCOMB (SSN-685)	X	X	X		X	X	
SSN-688 Class	X	X	X		X	X	
LCC-19 Class	X	X		X	X	X	
LHA-1 Class	X	X		X	X	X	
USS JOHN F KENNEDY (CV-67)	X	X		X	X		
USS ENTERPRISE (CVN-65)	X	X		X	X		
CVN-68 Class	X	X		X	X		
USS LEXINGTON (CVT-16)	X	X		X	X		
USS OKLAHOMA CITY (CG-5)	X	X		X	X	X	
CG-10 Class	X	X		X	X		
CG-16 Class	X	X		X	X	X	
CG-26 Class	X	X		X	X	X	
USS LONG BEACH (CGN-9)	X	X		X	X		
USS BAINBRIDGE (CGN-25)	X	X		X	X	X	
USS TRUXTUN (CGN-35)	X	X		X	X		
CGN-36 Class	X	X		X	X	X	
CGN-38 Class	X	X		X	X		
DD-710 Class	X	X	X		X		
DD-931 Class	X	X	X		X		
DD-933 Class	X	X	X		X		
DD-945 Class	X	X	X		X		
DD-963 Class	X	X		X	X	X	
DDG-2 Class	X	X	X		X		
DDG-31 Class	X	X	X		X		
DDG-35 Class	X	X		X	X	X	
DDG-37 Class	X	X	X	X	X	X	
FF-1040 Class	X	X	X		X		
FF-1052 Class	X	X	X		X		
FFG-1 Class	X	X	X		X	X	
USS OLIVER HAZARD PERRY (FFG-7)	X	X	X		X		
SSBN-598 Class	X	X	X		X	X	
SSBN-608 Class	X	X	X		X	X	
SSBN-616 Class	X	X	X		X	X	
USS TULARE (LKA-112)	X	X		X			X

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PART 707—SPECIAL RULES WITH RESPECT TO ADDITIONAL STATION AND SIGNAL LIGHTS

Sec.

707.1 Purpose of regulations.
707.2 Man overboard lights.
707.3 Yard arm signaling lights.
707.4 Aircraft warning lights.
707.5 Underway replenishment contour lights.
707.6 Minesweeping station keeping lights.
707.7 Submarine identification light.
707.8 Special operations lights.
707.9 Convoy operations stern light.
707.10 Wake illumination light.
707.11 Flight operations lights.
707.12 Amphibious operations lights.

AUTHORITY: 33 U.S.C. 182 and 1606, E.O. 11964.

SOURCE: 42 FR 61596, Dec. 6, 1977, unless otherwise noted.

§ 707.1 Purpose of regulations.

All ships are warned that when U.S. naval vessels are met in international and inland waters, some of the navigational lights displayed by them may be special lights for naval purposes. When used, they may be displayed simultaneously with the ordinary navigational lights required by the International Regulations for Preventing Collisions at Sea, 1972, or the Inland Navigational Rules. The lights are located and characterized in such a fashion that, as far as possible, they cannot be mistaken for any light authorized by either set of rules. This part publishes the special rules with respect to these additional station and signal lights promulgated by the Secretary of the Navy for vessels of the Navy.

§ 707.2 Man overboard lights.

Naval vessels may display, as a means of indicating man overboard, two pulsating, all round red lights in the vertical line located on a mast from where they can best be seen.

§ 707.3 Yard arm signaling lights.

Naval vessels may display, as a means of visual signaling, white all round lights at the ends of the yard arms. These lights will flash in varying sequences to convey the intended signal.

§ 707.4 Aircraft warning lights.

Naval vessels may display, as a means of indicating the presence of an obstruction to low flying aircraft, one all round red light on each obstruction.

§ 707.5 Underway replenishment contour lights.

Naval vessels may display, as a means of outlining the contour of the delivery ship during nighttime underway replenishment operations, either red or blue lights at delivery-ship-deck-edge extremities.

[42 FR 61596, Dec. 6, 1977, as amended at 44 FR 27991, May 14, 1979]

§ 707.6 Minesweeping station keeping lights.

Naval vessels engaged in minesweeping operations may display, as an aid in maintaining prescribed intervals and bearings, two white lights in a vertical line visible from 070° through 290° relative.

§ 707.7 Submarine identification light.

Submarines may display, as a distinctive means of identification, an intermittently flashing amber beacon located on the mast where it can best be seen, as near as practicable, all around the horizon.

§ 707.8 Special operations lights.

Naval vessels may dispay, as a means of coordinating certain special operations, a revolving beam colored red, green, or amber, located on either yard arm or the mast platform from where it can best be seen all around the horizon.

§ 707.9 Convoy operations stern light.

Naval vessels may display, during periods of convoy operations, a blue light located near the stern with the same characteristics as, but in lieu of, the normal white stern light.

§ 707.10 Wake illumination light.

Naval vessels may display a white spot light located near the stern to illuminate the wake.

§ 707.11 Flight operations lights.

Naval vessels engaged in night flight operations may display various arrangements of light systems containing combinations of different colored lights as a means of assisting in the launch and recovery of aircraft and enhancing flight safety. These light systems will be located at various points on the vessels, depending on the vessel type and the nature of the flight operations being conducted.

§ 707.12 Amphibious operations lights.

Naval vessels engaged in night amphibious operations may display various arrangements of light systems containing combinations of different colored lights as a means of assisting in the launch and recovery of assault craft and enhancing the safety of the amphibious operation. These light systems will be located at various points on the vessel, depending on the vessel type and the nature of the amphibious operations being conducted.

SUBCHAPTER C—PERSONNEL

PART 716—DEATH GRATUITY

Subpart A—Provisions Applicable to the Navy and the Marine Corps

Sec.
716.1 Principal rule.
716.2 Definitions.
716.3 Special situations.
716.4 Eligible survivors.
716.5 Delegation of authority.
716.6 Death occurring after active service.
716.7 Payment of the death gratuity.
716.8 Payments excluded.
716.9 Erroneous payment.

Subpart B—Provisions Applicable to the Navy

716.10 Procedures.

Subpart C—Provisions Applicable to the Marine Corps

716.11 Procedures.

AUTHORITY: Sec. 301, 80 Stat. 379, 1(32)(A), 72 Stat. 1452; 5 U.S.C. 301, 10 U.S.C. 1475-1480, Pub. L. 89-554.

SOURCE: 24 FR 7523, Sept. 18, 1959, unless otherwise noted.

Subpart A—Provisions Applicable to the Navy and the Marine Corps

§ 716.1 Principal rule.

Under Title 10, U.S. Code, section 1475, the Secretary of the Navy shall have a death gratuity paid immediately upon official notification of the death of a member of the naval service who dies while on active duty, active duty for training, or inactive duty training. The death gratuity shall equal six months' basic pay (plus special, incentive, and proficiency pay) at the rate to which the deceased member was entitled on the date of his death but shall not be less than $800 nor more than $3,000. A kind of special pay included is the 25% increase in pay to which a member serving on a naval vessel in foreign waters is entitled under 10 U.S.C. 5540 when retained beyond expiration of enlistment because such retention was essential to the public interest.

§ 716.2 Definitions.

For the purposes of this part, terms are defined as follows:

(a) *Member of the naval service.* This term includes:

(1) A person appointed, enlisted, or inducted into the Regular Navy, Regular Marine Corps, Naval Reserve or Marine Corps Reserve, and includes a midshipman at the United States Naval Academy;

(2) Enlisted members of the Fleet Reserve and Fleet Marine Corps Reserve and retired members;

(3) A member of the Naval Reserve Officers Training Corps when ordered to annual training duty for 14 days or more, and while performing authorized travel to and from that duty; and

(4) Any person while en route to or from, or at a place for final acceptance for entry upon active duty in the naval service who has been ordered or directed to go to that place, and who has been provisionally accepted for such duty.

(b) *Active duty.* This term is defined as (1) full-time duty performed by a member of the naval service, other than active duty for training, or (2) as a midshipman at the United States Naval Academy, and (3) authorized travel to or from such duty or service.

(c) *Active duty for training.* Such term means:

(1) Full-time duty performed by a member of a Reserve component of the naval service for training purposes;

(2) Annual training duty performed for a period of 14 days or more by a member of the Naval Reserve Officers Training Corps; and

(3) Authorized travel to or from such duty.

(d) *Inactive-duty training.* Such term is defined as any of the training, instruction, appropriate duties, or equivalent training, instruction, duty, appropriate duties, or hazardous duty performed with or without compensation by a member of a Reserve component prescribed by the Secretary of the Navy pursuant to sections 206, 309, and 1002 of title 37, United States

Code or any other provision of law. The term does not include:

(1) Work or study performed by a member of a Reserve component in connection with correspondence courses in which he is enrolled, or

(2) Attendance at an educational institution in an inactive status under the sponsorship of the Navy or Marine Corps.

[24 FR 7523, Sept. 16, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

§ 716.3 Special situations.

(a) *Service without pay.* Any member of a Reserve component who performs active duty, active duty for training, or inactive-duty training without pay shall, for purposes of a death gratuity payment, be considered as being entitled to basic pay, including special pay and incentive pay if appropriate, while performing such duties.

(b) *Death occurring while traveling to and from active duty for training and inactive-duty training.* Any member of a Reserve component who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive-duty training and who dies from an injury incurred on or after January 1, 1957 while proceeding directly to or directly from such active duty for training or inactive-duty training, shall be deemed to have been on active duty for training or inactive-duty training as the case may be.

(c) *Hospitalization.* A member of a Reserve component who suffers disability while on active duty, active duty for training, or inactive-duty training, and who is placed in a new status while he is receiving hospitalization or medical care (including outpatient care) for such disability, shall be deemed, for purposes of death gratuity payment to have continued on active duty, active duty for training, or inactive-duty training, as the case may be, in the event of his death in such status.

(d) *Discharge or release from a period of active duty.* A person who is discharged or released from active duty (other than for training) is considered to continue on that duty during the period of time required for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[24 FR 7523, Sept. 18, 1959, as amended at 25 FR 7792, Aug. 16, 1960]

§ 716.4 Eligible survivors.

(a) The death gratuity shall be paid to or for the living survivor or survivors of the deceased member first listed below:

(1) The lawful spouse. (For purpose of this part, a man or woman shall be considered to be the spouse if legally married to the member at the time of the member's death.)

(2) His children (without regard to their age or marital status) in equal shares.

(3) Parent(s), brother(s) or sister(s) or any combination of them, when designated by the deceased member.

(4) Undesignated parents in equal shares.

(5) Undesignated brothers and sisters in equal shares.

In paragraphs (a) (2), (3) and (4), respectively, of this section, the terms "child" and "parent" have the meanings assigned to them by Title 10, U.S. Code section 1477 and the term "parents" includes persons in loco parentis as indicated by that section. The terms "brother" and "sister" in paragraphs (a) (3) and (5) of this section include brothers and sisters of the half blood and those through adoption.

(b) *Designation of payee by service member.* Where the service member has designated a beneficiary and is not survived by a spouse, child, or children, the payment will be made to the specific person designated by him provided the designee falls within the class of beneficiaries permitted as set forth in paragraph (a)(3) of this section. If more than one person is so designated on the Record of Emergency, payment will be made in equal shares unless the member designated a proportionate share to each beneficiary. Frivolous designations, such as one per centum to a particular beneficiary, should not be made.

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(c) *Death of survivor prior to receipt of gratuity.* (1) If a survivor dies before receiving payment, or if a designated beneficiary predeceases the member (and there is no other designated beneficiary) such amount shall be paid to the then living survivor or survivors listed first under paragraph (a) of this section.

(2) In case one of the beneficiaries (parents or brothers or sisters) designated by a member, pursuant to paragraph (a)(3) of this section, to receive death gratuity payment dies prior to the member's death, or after his death but prior to the time payment is made, the share which would have been paid to the deceased designee may be paid to the other person or persons designated.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972]

§ 716.5 Delegation of authority.

(a) Pursuant to the authority contained in Title 10, U.S. Code, section 1479, as to deaths described in section 1475 thereof, the Secretary of the Navy has delegated to commanding officers of naval commands, installations, or districts, with respect to naval personnel, and to Marine Corps commanding generals and officers in command of regiments, battalions or equivalent units and of separate or detached commands who have custody of service records, with respect to Marine Corps personnel, authority to certify for the payment of death gratuity the lawful spouse or designated beneficiary(ies) of the deceased service member who was residing with him at or near his place of duty at the time of his death, except in cases in which a doubt may exist as to the identity of the legal beneficiary. Disbursing officers are authorized to make payment of the death gratuity upon receipt of certification from the Commanding Officer.

(b) The Secretary of the Navy has delegated authority to the Chief of Naval Personnel as to naval personnel, and to the Commandant of the Marine Corps (Code MSPA-1) as to Marine Corps personnel, the authority to certify the beneficiary(ies) for receipt of payment of death gratuity in all appropriate cases of payment of death gratuity under the Servicemen's and Veterans' Survivor Benefits Act (now reenacted in 10 U.S.C. 1475-1480), including, but not limited to:

(1) Cases in which a doubt may exist as to the identity of the legal beneficiary; and (2) cases in which the widow or designated beneficiary(ies) of the deceased service member was not residing with him at or near his place of duty at the time of his death.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

§ 716.6 Death occurring after active service.

(a) Under Title 10, U.S. Code, section 1476, the death gratuity will be paid in any case where a member or former member dies on or after January 1, 1957, during the 120-day period which begins on the day following the date of his discharge or release from active duty, active duty for training, on inactive duty training, if the Administrator of Veterans' Affairs determines that:

(1) The decedent was discharged or released, as the case may be, from the service under conditions other than dishonorable from the last period of the duty or training performed; and

(2) Death resulted from disease or injury incurred or aggravated while on such active duty or active duty for training; or while performing authorized travel to or from such duty; or

(3) Death resulted from injury incurred or aggravated while on such inactive-duty training or while traveling directly to or from such duty or training.

(b) For purposes of computing the amount of the death gratuity in such instances, the deceased person shall be deemed to be entitled on the date of his death to basic pay (plus any special, incentive and proficiency pay) at the rate to which he was entitled on the last day he performed such active duty, active duty for training, or inactive duty training. A kind of special pay included is a pay increase under 10 U.S.C. 5540; see § 716.1.

(c) The Department of the Navy is precluded from making payment of the death gratuity pending receipt of the determinations described in para-

graph (a) of this section. In view of this, commands should insure that the medical records and reports of investigations by fact-finding bodies be submitted to the Navy Department at the earliest possible date. The Veterans' Administration is promptly notified of all deaths of this category reported, and upon the request of that agency all pertinent data is forwarded.

§ 716.7 Payment of the death gratuity.

(a) *Claim certification and voucher for the death gratuity payment.* The Comptroller General of the United States has approved DD Form 397 as the form to be used hereafter for claim certification and voucher for the death gratuity payment.

(b) *Active duty deaths (Navy).* To effect immediate payment of death gratuity the following actions will be taken:

(1) The commanding officer will ascertain that the deceased member died while on active duty, active duty for training, or inactive-duty training, and will obtain the name, relationship, and address of the eligible survivor from the Service Record of the deceased. The Dependency Application/Record of Emergency Data (NAVPERS 1070/602) or Record of Emergency Data (DD Form 93), will normally contain this information. In addition, in the case of enlisted personnel, the Application for Dependents Allowance (BAQ [Basic Allowance for Quarters]), NAVPERS Form 668, may serve as a source of corroboration. He will, with the cooperation of the disbursing officer, initiate preparation of a Claim Certification and Voucher for Death Gratuity Payment, DD Form 397, in original and five copies, completing blocks 5 through 14 inclusive, and the administrative statement in block 18. The administrative statement in block 18 will be signed by the commanding officer or acting commanding officer.

(2) The disbursing officer will, upon receipt of the DD Form 397, draw a check to the order of the eligible survivor named in block 5, complete blocks 2, 3, 4, and the check payment data portion of block 18.

(3) Under arrangements made by the commanding officer, the check and the original and one copy of the voucher, DD Form 397, will be delivered to the payee. The payee will be required to complete block 15, sign in block 17a, and have two witnesses complete block 17 on the original voucher at the time the check is delivered. Under no circumstances will the check be delivered to the payee until this action has been accomplished. The payee will retain the copy of the voucher, DD Form 397, and the signed original voucher will be returned by hand to the disbursing officer by the person designated to deliver the check.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

§ 716.8 Payments excluded.

(a) No payment shall be made if the deceased member suffered death as a result of lawful punishment for a crime or for a military or naval offense, except when death was so inflicted by any hostile force with which the Armed Forces of the United States have engaged in armed conflict.

(b) No payment will be made to a survivor implicated in the homicide of the deceased in the absence of evidence clearly absolving such survivor of any felonious intent.

(c) Unless the laws of the place where a minor beneficiary resides provide that such a payment would grant a valid acquittance of the Government's obligation to make a payment of death gratuity to or for a minor, a death gratuity of more than $1,000 may not be paid in whole or in part to a parent as natural guardian of a minor or to any other person who is not a legal guardian appointed by the civil court to manage the minor's financial affairs.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

§ 716.9 Erroneous payment.

Where through administrative mistake of fact or law, payment of the death gratuity is made to a person clearly not entitled thereto, and it is equally clear that another person is entitled to the death gratuity, the Chief of Naval Personnel (Pers-732) or the Commandant of the Marine Corps (Code MSPA-1), as appropriate, will

certify payment to the proper payee, irrespective of recovery of the erroneous payment. On the other hand, where a payment of the death gratuity has been made to an individual on the basis of representations of record made by the deceased member as to his marital and dependency status, and the Government otherwise has no information which would give rise to doubt that such status is as represented, the payment is not to be regarded as "erroneous." The Government has a good acquittance in such cases even though it may subsequently develop that the payee is not the proper statutory payee of the gratuity and no second payment is authorized.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

Subpart B—Provisions Applicable to the Navy

§ 716.10 Procedures.

(a) *Action by commanding officers.* See § 716.7(b).

(1) *Immediate payment—Eligible beneficiary residing with deceased member.* Commanding officers, in order to expedite the payment of the death gratuity, will, upon official notification of death, ascertain the duty status of the deceased, and determine the eligibility of the spouse or designated beneficiary who was residing with the deceased member on or near his duty station at the time of his death. The services of a staff or district legal officer will be utilized as required. Every effort should be made to effect prompt payment (within 24 hours, if possible). It is the intent that determinations of entitlement by commands in the field will be confined largely to spouses and parents designated by the service member who were living with him at the time of his death.

(2) *Questionable cases.* If entitlement to the death gratuity payment is questionable after seeking advice of the staff or district legal officer, such case will be forwarded promptly to the Chief of Naval Personnel (Pers-732) with a brief statement relative to the facts which raised the issue of doubt. Every effort will be made to expedite action by a review of the official records of the decedent in the Bureau of Naval Personnel and the Family Allowance Activity at Cleveland, Ohio. Those cases wherein the service member was in a deserter status, absent without leave, or in the custody of civil authorities at the time of death, wherein guardianship must be provided for the protection of the decedent's children, or wherein a technicality exists which makes immediate certification legally unsound, will be considered questionable.

(3) *Exception.* Where the entitlement of the survivor who is living with the deceased at the time of his death is questionable and such survivor is in dire financial circumstances, the Chief of Naval Personnel (Pers-G23) shall be requested by message to make an adjudication of entitlement. If it is determined that the survivor is entitled to the payment, the commanding officer will be authorized by message to execute DD Form 397.

(b) *Action by Casualty Assistance Calls Program (CACP) officers; Potential beneficiary not residing with member*—(1) *Widow(er).* The CACP officer, on his or her initial visit to a widow(er), determines, propriety permitting, whether there is an urgent need for financial assistance. If there is an urgent need for financial assistance, the CACP officer should obtain DD Form 397 from any military disbursing office and, on his or her second visit to the widow(er), have him or her sign it and obtain the signatures of two witnesses on the form. It should be noted that the following procedure is confined to cases in which the decedent's eligible survivor for the death gratuity is a widow(er), and efforts to effect immediate payment in accordance with the intent of the governing statute are appropriate. In such cases, the CACP officer, upon learning that a widow(er), not residing with his or her spouse at or near the spouse's duty station, is in urgent need of financial assistance, shall advise the Chief of Naval Personnel (Pers-732) of the need by message. The CACP officer shall send a copy of this message to the decedent's duty station, if known. Upon receipt, the disbursing officer will furnish the Navy Finance

Center, Cleveland, Ohio 44199, with the decedent's basic monthly pay [plus any special (see § 716.1), incentive, and proficiency pay] in the event the pay account has not been forwarded previously to that center sufficiently early to have reached there. The CACP officer shall also send a copy of his message to the Navy Finance Center with the request that payment of the death gratuity be made upon receipt of the certification of beneficiary entitlement from the Chief of Naval Personnel (Pers-732).

(2) *Navy Relief.* In cases where there is immediate need prior to receipt of the death gratuity, the Navy Relief Society will be contacted by the Casualty Assistance Calls Program officer.

(c) *Action by the Chief of Naval Personnel.* (1) In all cases where death gratuity is not authorized to be paid locally and in cases where authority exists to pay locally but entitlement is questionable (see paragraph (a)(2) of this section), the Chief of Naval Personnel (Pers-732) will expedite adjudication of claims. As indicated in paragraph (b)(1) of this section CACP officers will refer cases of urgent financial need to the Chief of Naval Personnel (Pers-732) by message for action.

(2) If a minor is entitled to a death gratuity under 10 U.S.C. 1477 not exceeding $1,000, such death gratuity may be paid to the father or mother as natural guardian on behalf of the minor, provided a legally appointed guardian has not been appointed, upon substantiation by a sworn (notarized) statement of the natural guardian:

(i) That no legal guardian has been appointed and that such an appointment is not contemplated;

(ii) The relationship of the natural guardian to the minor;

(iii) That the minor is in the actual custody of the natural guardian;

(iv) That an amount paid to the natural guardian will be held for, or applied to, the use and benefit of the minor.

If the death gratuity to which a minor is entitled exceeds $1,000, the appointment of a legal guardian on behalf of the minor is requested. Certification of the minor eligible to receive the death gratuity is made by the Chief of Naval Personnel (Pers-732) and payment is effected by the Navy Finance Center, Cleveland, Ohio 44199;

(d) *Cross-servicing procedure.* Payment of the death gratuity may be made by a disbursing officer who is maintaining the pay record of a member of another service, provided the command to which the member is attached and which maintains his service record is in the immediate vicinity and certificates the beneficiary eligible to receive payment on the proper voucher (DD Form 397). Otherwise the pay record will be sent to the Army Finance Center, Air Force Finance Center, Commandant of the Marine Corps (Code CDB), the Navy Finance Center, of the Commandant, U.S. Coast Guard, as appropriate.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979; 45 FR 43165, June 26, 1980]

Subpart C—Provisions Applicable to the Marine Corps

§ 716.11 Procedures.

(a) *Action.* Commanding officers will direct immediate payment of the gratuity where the deceased member's spouse was, in fact, residing with the member on or near the station of duty at the time of the member's death while on active duty, active duty for training, or inactive-duty training. Every effort should be made to effect such payment promptly (within 24 hours, if possible). In cases where the eligible survivor residing with the member on or near the duty station is other than a spouse, commanding officers may direct the payment of death gratuity when the case can be properly determined, and an urgent need exists for immediate payment. Proper determination is imperative.

(b) *Qualifications.* (1) Where any doubt exists as to the legal recipient of the gratuity, the case will be referred to the Commandant of the Marine Corps (Code MSPA-1) for determination.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25648, May 2, 1979]

PART 718—MISSING PERSONS ACT

Sec.
718.1 General provisions.
718.2 Allotments.
718.3 Transportation of dependents.
718.4 Delegations.

AUTHORITY: Sec. 301, 80 Stat. 379; 5 U.S.C. 301. Interpret or apply 80 Stat. 112-117, 248-254; 5 U.S.C. 5561-5568, 37 U.S.C. 551-558, unless otherwise noted.

§ 718.1 General provisions.

(a) Under the provisions of the Missing Persons Act, as amended, a finding of presumptive death is made by the Secretary of the Navy when a survey of all available sources of information indicates beyond doubt that the presumption of continuance of life has been overcome. When a finding of presumptive death is made, a man's pay accounts are closed as of the day following the expiration of the 12 months' absence or a longer period when justified, and the various benefits, such as the six months' gratuity, become payable. A finding of presumptive death concerning an officer or enlisted man of the Navy means simply that as of the date thereof he is for the purposes of Naval administration no longer alive. It does not mean that death occurred on that or on any other certain date.

(b) Findings of presumptive death are never made when the "missing" status has not continued for at least 12 months. Whenever, subsequent to the expiration of the 12th month, cumulative or other evidence establishes by its preponderance that a "missing" person is no longer alive, a prompt finding of presumptive death will be made. Also, such a finding will be made whenever justified by the lapse of time beyond the 12 months' absence without specific information being received.

(c) The Secretary of the Navy, or such subordinate as he may designate, has authority to make all determinations necessary in the administration of the act, and for the purposes of the act determinations so made shall be conclusive as to death or finding or death, as to any other status dealt with by the act, and as to any essential date including that upon which evidence or information is received in the Department. The determination of the Secretary of the Navy, or of such subordinate as he may designate, is conclusive as to whether information received concerning any person is to be construed and acted upon as an official report of death. When any information deemed to establish conclusively the death of any person is received in the department, action shall be taken thereon as an official report of death, notwithstanding any prior action relating to death or other status of such person. Under the foregoing provisions a determination of death is made prior to the expiration of 12 months when the evidence received is considered to establish conclusively the fact of death and settlement of accounts is made to the date established as the date of receipt of evidence on which the fact of death is established.

[17 FR 5390, June 14, 1952]

§ 718.2 Allotments.

During such period as a person is in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, allotments from his pay and allowances may be initiated, continued, discontinued, increased, decreased, suspended or resumed in behalf of his dependents and for such other purposes as are justified by the circumstances and are in the interests of the person or of the Government.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015)

[26 FR 12658, Dec. 29, 1961]

§ 718.3 Transportation of dependents.

(a) Whenever a person in active service is officially reported as dead, injured, (Only when the anticipated period of hospitalization or treatment is expected to be of prolonged duration as shown by a statement of the commanding officer at the receiving hospital), missing for a period of 29 days or more, interned in a foreign country, or captured by a hostile force, his dependents, household and personal effects including one private-

ly owned motor vehicle may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or to the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with the provisions of paragraph (d) of this section; or, upon application by such dependent, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section, or upon the person's application if injured, to such location as may have been determined in advance or as may be subsequently approved, except that a reasonable relationship must exist between the condition and circumstances of the dependents and the destination to which transportation is requested. In the case of a person in an injured status, transportation of his dependents or household and personal effects may be authorized only when the hospitalization or treatment of the injured person will be of prolonged duration. Payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of the travel for which transportation in kind is not furnished, may be authorized, when such travel has been completed.

(b) When the Secretary of the Navy or his designee determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from such sale shall be transmitted to the owner, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section; but if there be no such persons or if such persons or their addresses are not ascertainable within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts.

(c) The Secretary of the Navy or his designee is authorized to store the household and personal effects of the person until such time as proper disposition can be made. The cost of such storage and transportation, including packing, crating, drayage, temporary storage, and unpacking of household and personal effects, will be charged against appropriations currently available.

(d) The following provisions apply to the determination of the "other person" or persons referred to in paragraphs (a) and (b) of this section who may receive the effects or proceeds.

(1) If no duly appointed legal representative of the owner of the personal effects makes demand upon the Department of the Navy for the effects, the determination by naval authorities as to the next of kin or heirs of the owner of the personal effects may be made on the basis of the following:

(i) Personnel records; or

(ii) Other documents applicable to the case; or

(iii) Title 10, U.S.C. Section 2771, to the extent that it prescribes an order of precedence among next of kin or heirs, namely, the widow or widower of the owner; if no widow or widower, then the child or children of the owner and descendants of deceased children, by representation; if none of the above, the parents of the owner or the survivor of them; or if none of the above, other persons determined to be eligible under the laws of the domicile of the owner.

(2) Such determination should be regarded as administrative rather than legal, as the determination does not vest title to effects or proceeds in the next of kin, heirs, or legal representative to whom the effects are delivered. Therefore, delivery of the personal effects to other than the owner will be made subject to the following advisory note which should be written on a copy of the inventory or in a letter:

Delivery of the personal effects into the custody of other than the owner thereof, by the Department of the Navy, does not in any way vest title to the effects in the recipient. Delivery of the effects to the recipient is made so that distribution may be

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Table One—Continued

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances In Annex III, 9 years; Rule 38(g)
USS CHARLESTON (LKA-113)	X	X		X			X
USS PAUL REVERE (LPA-248)	X	X		X			X
USS FRANCIS MARION (LPA-249)	X	X		X			X
LPD-1 Class	X	X		X		X	
LPD-4 Class	X	X		X		X	X
LPH-2 Class	X	X		X		X	X
LSD-28 Class	X	X		X	X	X	
LSD-36 Class	X	X		X	X	X	X
LST-1179 Class	X	X		X		X	X
MSO-422 Class	X	X	X			X	X
MSO-428 Class	X	X	X			X	X
MSO-508 Class	X	X	X			X	X
PG-84 Class	X	X	X				X
PG-92 Class	X	X	X				X
AE-21 Class	X	X		X			X
AE-23 Class	X	X		X			X
AE-26 Class	X	X		X			X
AFS-1 Class	X	X		X			X
AO-51 Class	X	X		X	X		X
AO-143 Class	X	X		X	X		X
AOE-1 Class	X	X		X	X	X	X
AOR-1 Class	X	X		X		X	X
AD-14 Class	X	X		X		X	X
AD-26 Class	X	X		X			X
AD-37 Class	X	X		X			X
AD-41 Class	X	X					X
USS COMPASS ISLAND (AG-153)	X	X		X			X
AG-520 Class	X	X	X				X
USS POINT LOMA (AGDS-2)	X	X		X	X	X	X
USS PLAINVIEW (AGEH-1)	X	X	X			X142X	
USS LA SALLE (AGF-3)	X	X		X	X	X	
USS GLOVER (AGFF-1)	X	X	X			X	
USS DOLPHIN (AGSS-555)	X	X	X			X	X
USS TANG (AGSS-563)	X	X	X			X	X
AR-5 Class	X	X		X			X
AR-28 Class	X	X		X			X
ARS-6 Class	X	X	X				X
ARS-38 Class	X	X	X				X

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Table One—Continued

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances In Annex III, 9 years; Rule 38(g)
AS-11 Class	X	X		X		X	X
USS PROTEUS (AS-19)	X	X		X		X	X
AS-31 Class	X	X		X		X	X
AS-33 Class	X	X		X		X	X
AS-36 Class	X	X		X		X	X
ASR-7 Class	X	X	X				X
ASR-21 Class	X	X	X				X
ATF-81 Class	X	X	X				X
ATF-96 Class	X	X	X				X
AFT-148 Class	X	X	X				X
ATS-1 Class	X	X	X				X
USS NORTON SOUND (AVM-1)	X	X		X	X		X
AS-39 Class	X	X					X
LCU-1610 Class		X	X			X	X
LCU-1648 Class		X	X			X	X
YFU (Ex-LCU-1466 Class)		X	X			X	X
DD-825 Class	X	X	X			X	
DD-948 Class	X	X	X			X	
FF-1037 Class	X	X	X			X	
MSB Class	X	X				X	X

(Sec. 6 Pub. L. 95-75, 91 Stat. 309 (33 U.S.C. 1605), E.O. 11964)

[42 FR 36434, July 14, 1977, as amended at 42 FR 48876, Sept. 26, 1977; 43 FR 33710, Aug. 1, 1978; 43 FR 49536, Oct. 24, 1978; 44 FR 24267, Apr. 25, 1979; 45 FR 32672, May 19, 1980]

made in accordance with the laws of the state in which the owner of the effects was legally domiciled or to restore the effects to the owner in the event of his return from a missing status.

(3) When it is impracticable to divide the personal effects of a person into equal shares, and two or more persons within a class, as provided in 10 U.S.C. section 2771, are entitled to receive the effects but cannot agree among themselves as to which one of them shall receive the effects, then all of the effects will be retained by either the Personal Effects Distribution Center at Norfolk, Virginia, or the Personal Effects Distribution Center at Oakland, California, for a period of two years from the date of death of the member. At the expiration of the two-year period such effects will be sold.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015; Pub. L. 89-554, 80 Stat. 379 (5 U.S.C. 301)

[26 FR 12659, Dec. 29, 1961, as amended at 37 FR 6472, Mar. 30, 1972; 44 FR 22456, Apr. 16, 1979]

§ 718.4 Delegations.

The Secretary of the Navy has delegated to the Director, Personal Services Division, Bureau of Naval Personnel with respect to personnel in the Navy, and to the Head, Personal Affairs Branch Manpower Department (Code MSPA), United States Marine Corps, with respect to personnel in the Marine Corps, authority to make all determinations to administer the act.

(Pub. L. 89-554, 80 stat. 379 (5 U.S.C. 301))

[17 FR 5391, June 14, 1952, as amended at 19 FR 7959, Dec. 2, 1954; 44 FR 22456, Apr. 16, 1979]

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Subparts A–B—[Reserved]

Subpart C—Trial Matters

Sec.

719.112 Authority to grant immunity from prosecution.
719.113—719.114 [Reserved]
719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

Subpart D—[Reserved]

Subpart E—Miscellaneous Matters

719.138 Fees of civilian witnesses.
719.139—719.141 [Reserved]
719.142 Suspension of counsel.
719.143 Petition for new trial under 10 U.S.C. 873.
719.144 Application for relief under 10 U.S.C. 769 in cases which have been finally reviewed.
719.145—719.150 [Reserved]
719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

AUTHORITY: 3 U.S.C. 301; 5 U.S.C. 301; 10 U.S.C. 815, 5031, and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 5997, Mar. 6, 1973, unless otherwise noted.

Subparts A–B—[Reserved]

Subpart C—Trial Matters

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case

whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government shall be forwarded to the cognizant officer exercising general court-martial jurisdiction by the trial counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other factfinding body, or the investigator when no charges have been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice.

(c) *Civilian witnesses.* Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary to the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, then the approval of the Attorney General of the United States or his designee must be obtained prior to the issuance of an order to testify to the witness by the cognizant officer exercising general court-martial jurisdiction. The officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a letter to the Judge Advocate General requesting assistance in obtaining a grant of immunity for the civilian witness and enclosing the signed order to testify sought to be approved. The order to testify should be substantially in the form set forth in Appendix section 1-d(2).[1] Requests to grant immunity to civilian witnesses must be in writing, allowing at least 3 weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.

(2) Name of the individual for whom the immunity is requested.

(3) Name of the employer or company with which he is associated.

(4) Date and place of birth, if known, of the witness.

(5) FBI number or local police number, if any, and if known.

(6) Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief résumé of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(i) What testimony the prospective witness is expected to give;

(ii) How this testimony will serve the public interest;

(iii) Whether the witness (*a*) has invoked the privilege against self incrimination; or (*b*) is likely to invoke the privilege;

(iv) If paragraph (c)(9)(iii)(*b*) of this section is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(d) *Civilian witnesses—post-testimony procedure.* After the witness has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530.

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

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[1] Filed as part of original document.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A copy of this correspondence together with a verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(e) *Review.* The officer granting immunity to a witness is thereafter precluded from taking reviewing action on the record of the trial before which the witness granted immunity testified. However, a successor in command not participating in the grant of immunity is not so precluded.

(f) *Form of grant.* In any case in which a military witness is granted transactional immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-d(1).[1] In any case in which a military witness is granted testimonial immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-d(2).[1]

[38 FR 5997, Mar. 6, 1973, as amended at 39 FR 18436, May 28, 1974]

[1] Filed as part of original document.

§§ 719.113–719.114 [Reserved]

§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) *Release of information*—(1) *General.* There are valid reasons for making available to the public information about the administration of military justice. The task of striking a fair balance between the protection of individuals accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the military service and of the workings of military justice, depends largely on the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the completion of trial (court-martial sessions) or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) *Release of information.* (i) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon

specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(ii) Except in unusual circumstances, information which is subject to release under this regulation should be released by the cognizant public affairs officer; and requests for information received by others from representatives of news media should be referred to such officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) *Information subject to release.* On inquiry, the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in paragraph (a)(6) of this section:

(i) The accused's name, grade, age, unit, regular assigned duties, residence.

(ii) The substance of the offenses of which the individual is accused or suspected.

(iii) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(iv) The identity of the apprehending and investigating agency, and the identity of counsel of the accused, if any.

(v) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(vi) The type and place of custody, if any.

(vii) Information which has become a part of the record of proceedings of the court-martial in open session.

(viii) The scheduling or result of any stage in the judicial process.

(ix) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of such information is approved by the counsel of the accused).

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released except as provided in paragraph (a)(6) of this section.

(i) Subjective opinions, observations, or comments concerning the accused's character, demeanor at any time (except as authorized in paragraph (a)(4)(v) of this section), or guilt of the offense or offenses involved.

(ii) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(iii) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(iv) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(v) The identity, testimony, or credibility of possible witnesses, except as authorized in paragraph (a)(4)(v), of this section.

(vi) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(vii) References to confidential sources or investigative techniques or procedures.

(viii) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under

paragraph (a)(5) of this section or the nonrelease of information permitted under paragraph (a)(4) of this section. In these cases the senior judge advocate of the command involved shall be responsible for determining whether questionable material shall be released.

(b) *Spectators*—(1) *At sessions of courts-martial.* The sessions of courts-martial shall be public and, in general, all persons, except those who may be required to give evidence, shall be admitted as spectators. Whenever necessary to prevent the dissemination of classified information to other than authorized persons, the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, as appropriate, may direct that the spectators involved be excluded from a trial or a portion thereof. In all other situations, spectators or classes of spectators may be excluded only when the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, in the exercise of the discretion reposed in him, determines such action to be legally necessary or proper.

(2) In any preliminary hearing, including a hearing conducted pursuant to 10 U.S.C. 832, or a court of inquiry or investigation conducted pursuant to this manual, the presiding officer, upon motion of the Government or the defense or upon his own motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

Subpart D—[Reserved]

Subpart E—Miscellaneous Matters

§ 719.138 Fees of civilian witnesses.

(a) Method of Payment: The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed, public voucher or such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial.

(2) Summary court.

(3) Counsel for the court in a court of inquiry.

(4) Recorder or junior member of a board to redress injuries to property.

(5) Military or civil officer before whom a deposition is taken.

(i) The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 5), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

(b) Obtaining money for advance tender or payment: Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witnesses for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) Reimbursement: If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) Certificate of person before whom deposition is taken: The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned. See paragraph 117b(9), MCM.

(e) Payment of accrued fees: The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) Computation: Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) Nontransferability of accounts: Accounts of civilian witnesses may not be transferred or assigned.

(h) Signatures. Signatures of witnesses signed by mark must be witnessed by two persons.

(i) Rates for civilian witnesses prescribed by law.

(1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a naval tribunal, or at a place where his deposition is to be taken for use before such court or fact-finding body, will receive:

(i) $20 for each day's actual attendance and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) $16 per day for expenses of subsistence (including the time necessarily occupied in going to and returning from the place of attendance) if the witness attends at a point so far removed from his residence as to prohibit return thereto from day to day.

(iii) 10 cents per mile for going from and returning to his place of residence, provided such travel is performed as a direct result of being compelled or required to appear as a witness. Regardless of the mode of travel employed by the witness, computation of mileage in this respect shall be made on the basis of a uniform table of distances adopted by the Attorney General (Rand McNally Standard Highway Mileage Guide or any other generally accepted highway mileage guide which contains a short-line nationwide table of distances and which is designated by the Assistant Attorney General for Administration for such purpose). With respect to travel in areas for which no such highway mileage guide exists, mileage shall be computed on the basis of (*a*) the mode of travel actually employed, (*b*) a usually traveled route, and (*c*) distances as generally accepted in the locality. In lieu of the mileage allowance provided for herein, witnesses who are required to travel between Hawaii, Puerto Rico, the territories and possessions, or to and from the continental United States, shall be entitled to

the actual expenses of travel at the lowest first class rate available at the time of reservation for passage by the means of transportation employed.

(iv) Paragraph (i)(1) of this section shall not apply to Alaska. See 28 CFR 21.3 for fees and allowances of witnesses in Alaska, or the Judge Advocate General will, upon request, furnish the current applicable rates.

(v) Further, nothing in paragraph (i)(1) of this section shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for:

(*a*) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpena or as a direct result of the issuance of invitational orders; or (*b*) for travel which is performed prior to being duly summoned as a witness; or (*c*) for travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

(2) *Civilian witnesses in Government employ.* A civilian in the employ of the Government, when summoned as a witness, shall be paid (i) his necessary expenses, incident to travel by common carrier or, if travel is made by privately owned automobile, mileage at the rate of 10 cents per mile, and (ii) a per diem allowance at the rate of $25 in lieu of subsistence within the continental limits of the United States. In Alaska, Hawaii, and outside the United States, he shall be paid at the maximum rates prescribed by the Bureau of the Budget pursuant to the Travel Expense Act of 1949, as amended (5 U.S.C. 5702). Such per diem allowance shall be paid in accordance with the provisions of the Standardized Government Travel Regulations (see NCPI 4650). If the tribunal is in session at the place where the civilian witness in the employ of the Government is stationed, he shall receive no allowance.

(j) Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested in accordance with paragraph 115a, MCM, or whose testimony is determined not to meet the standards of relevancy and materiality set forth in that paragraph.

(k) Expert witnesses: (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the staff judge advocate of the local area coordinator. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commandant of the Fourteenth Naval District. See paragraph (l) of this section for fees payable to foreign nationals.

(2) The provisions of paragraph (i) of this section are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with paragraph 116, MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

(l) Payment of witness fees to foreign nationals: Officers exercising general court-martial jurisdiction in areas other than a State of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

§§ 719.139–719.141 [Reserved]

§ 719.142 Suspension of counsel.

(a) *General.* When a person, military or civilian, has, pursuant to paragraph 43, MCM, and these regulations, been suspended from acting as counsel before courts-martial and the Navy Court of Military Review, he shall not, during the period of such suspension, be eligible to so act. Such suspension is separate and distinct from any matter involving contempt, discussed in paragraphs 10 and 118, MCM, and from withdrawal of certification made pursuant to 10 U.S.C. 826 and 827.

(b) *Grounds for suspension.* Suspension shall be accomplished only when, by his personal or professional conduct, a person has demonstrated that he is so lacking in competency, integrity, or ethical or moral character as to be unacceptable as counsel before a court-martial or the Navy Court of Military Review. Specific grounds for suspension include, but are not limited to:

(1) Demonstrated incompetence while acting as counsel during pretrial, trial or post-trial stages of a court-martial;

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics;

(3) Fabricating papers or other evidence;

(4) Tampering with a witness;

(5) Abusive conduct toward the court-martial, the Navy Court of Military Review, the military judge, or opposing counsel;

(6) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel (see paragraphs 42, 44, 46, and 48, MCM);

(7) Conviction of an offense involving moral turpitude or conviction of a violation of 10 U.S.C. 848;

(8) Disbarment by a State or Federal court or the U.S. Court of Military Appeals; or

(9) Indefinite suspension as counsel by the Judge Advocate General of the Army or Air Force or the General Counsel of the Treasury Department.

Action to suspend should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has presented an aggressive, zealous, or novel defense, or when his apparent misconduct as counsel stems from inexperience or lack of instruction in the performance of legal duties. The Code of Professional Responsibility of the American Bar Association is considered to be generally applicable as rules of professional conduct for persons acting as counsel before naval courts-martial and the Navy Court of Military Review, and is quoted, in part, for guidance:

DR 2-110 WITHDRAWAL FROM EMPLOYMENT

(A) *In general.* (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) *Mandatory withdrawal.* A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) *Permissive withdrawal.* If DR 2-110(B) is not applicable, a laywer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith

argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 4-101 Preservation of Confidences and Secrets of a Client

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

DR 6-101 Failing to Act Competently

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 7-101 Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating with One of Adverse Interest

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7-106 Trial Conduct

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

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(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Internationally or habitually violate any established rule of procedure or of evidence.

DR 7-107 [SECTIONS (A)-(E)] TRIAL PUBLICITY [SEE ALSO: § 719.115]

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or test of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(c) *Action to suspend*—(1) *General.* Action to suspend a person from acting as counsel before courts-martial and the Navy Court of Military Review will be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to suspension of counsel, full consideration shall be given to the effective-

ness and appropriateness of such measures as warning, admonition, instruction, proceedings in contempt and other punitive action.

(2) *Report of grounds for suspension.* When information as to the occurrence or existence of any ground for suspension comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff-judge advocate, or member of the Navy Court of Military Review, such information shall be reported, together with appropriate supporting information, to the officer exercising general court-martial jurisdiction over the command of such reporting officer or to the Judge Advocate General. Prompt action shall be taken by the recipient of such report to dispose of the matter in the interest of proper administration of justice, except that, if the alleged disqualifying conduct occurs during the trial of a particular case and involves counsel for the accused, action may be deferred pending completion of the trial.

(3) *Hearing.* If the officer exercising general court-martial jurisdiction or the Judge Advocate General is of the opinion that there is probable cause to believe that a ground for suspension exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether the person involved should be temporarily or indefinitely suspended. The board so appointed shall consist of two or more members who are certified as qualified to act as military judge or counsel of general courts-martial pursuant to 10 U.S.C. 826 or 827. The board shall cause notice to be given to the counsel concerned, informing him of the misconduct or other disqualification alleged and affording him the opportunity to appear before it for a hearing. The counsel shall be permitted at least 5 days subsequent to notice to prepare for a hearing. Failure to appear on a set date subsequent to notice will constitute a waiver of appearance. Upon ascertaining the relevant facts after notice and hearing, the board will report its findings and recommendations based thereon to the officer who appointed the board. If the board was not convened by the Judge Advocate General, the officer who appointed the board shall (unless he deems the investigation incomplete, in which case he may direct further investigation and hearing), forward the report of the board to the Judge Advocate General together with his comments and recommendations concerning suspension of the person involved.

(4) *Action by the Judge Advocate General.* Upon receipt of the report of a board, the Judge Advocate General shall determine whether the person involved shall be suspended as counsel and whether such suspension shall be for a stated term or indefinite, and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon petition of the person who has been suspended, and upon good cause shown, or upon his own motion, modify or revoke any prior order of suspension.

(5) *Effect upon other actions.* Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as military judge or as counsel before general courts-martial made pursuant to 10 U.S.C. 826 or 827.

§ 719.143 Petition for new trial under 10 U.S.C. 873.

(a) *Statutory provisions.* 10 U.S.C. 873, provides, "At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

(b) *Time limitations.* If the petition for new trial was placed in military channels within 2 years after approval of a sentence by the convening authority, regardless of the date of its receipt in the Office of the Judge Advocate

General, it shall be considered to have been seasonably filed. Except in extraordinary circumstances, petitions will not be acted upon by the Judge Advocate General until all reviews in the field, contemplated by 10 U.S.C. 865, have been completed.

(c) *Submission procedures.* If the petitioner is on active duty the petition shall be submitted to the Judge Advocate General via the petitioner's commanding officer, the command which convened the court, and the command that took supervisory authority action on the case. If the supervisory authority has the record of trial he will forward it as an enclosure to his endorsement on the petition. The endorsement shall include information and comments as deemed appropriate. If the petitioner is no longer on active duty the petition may be submitted directly to the Judge Advocate General. If more than one court-martial is involved, a separate petition shall be filed for each trial.

(d) *Contents of petitions.* The form and contents of petitions for new trial are specified in paragraph 109e, MCM. In addition, the petition shall include the following:

(1) Place of trial.

(2) Command title of the organization at which the court-martial was convened (convening authority).

(3) Command title of the officer exercising general court-martial jurisdiction over the petitioner at the time of trial (supervisory authority).

(4) Type of court-martial which convicted the petitioner.

(e) *Receipt in the Office of the Judge Advocate General.* (1) If the case is pending before the Navy Court of Military Review or the U.S. Court of Military Appeals, or will be so pending, the petition will be referred for action to the Navy Court of Military Review or the U.S. Court of Military Appeals, as appropriate. If referred for action to the Navy Court of Military Review, such court shall take action in accordance with Courts of Military Review rules of practice and procedure.

(2) In all other cases the Judge Advocate General may take one or more of the following actions as appropriate:

(i) Return the petition for compliance with the procedural requirements of paragraph 109e, MCM, and paragraph (d) of this section.

(ii) Deny the petition if relief is not warranted under the criteria set forth in paragraph 109d, MCM.

(iii) Grant the petition if relief is warranted under the criteria set forth in paragraph 109d, MCM.

(iv) Refer the petition to one or more officers for review and preparation of a recommendation for the Judge Advocate General. In the event such a referral is made, counsel for the Government and for the petitioner will be designated and a hearing with oral argument after submission of briefs may be permitted.

§ 719.144 Application for relief under 10 U.S.C. 769, in cases which have been finally reviewed.

(a) *Statutory provisions.* 10 U.S.C. 769 provides in pertinent part, "Notwithstanding section 876 of this title (article 76) the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused."

(b) *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that took supervisory authority action on the case. If the original record of trial is held by the supervisory authority, he shall forward it as an enclosure to his endorsement. This endorsement shall also include information and comment on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(c) *Contents of applications.* All applications for relief shall contain:

(1) Full name of the applicant;
(2) Social Security number and branch of service, if any;
(3) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;
(4) Address at time the application is forwarded;
(5) Date of trial;
(6) Place of trial;
(7) Command title of the organization at which the court-martial was convened (convening authority);
(8) Command title of the officer exercising general court-martial jurisdiction over the applicant at the time of trial (supervisory authority);
(9) Type of court-martial which convicted the applicant;
(10) General grounds for relief which must be one or more of the following:
(i) Newly discovered evidence;
(ii) Fraud on the court;
(iii) Lack of jurisdiction over the accused or the offense;
(iv) Error prejudicial to the substantial rights of the accused;
(11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires);
(12) Any other matter which the applicant desires to submit; and
(13) Relief requested.

The applicant's copy of the record of trial will not be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(d) *Signatures on applications.* Unless incapable of making application himself, the applicant shall personally sign his application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter.

[38 FR 5997, Mar. 6, 1973, as amended at 39 FR 18437, May 28, 1974]

§§ 719.145–719.150 [Reserved]

§ 719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee's right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

[39 FR 18437, May 28, 1974]

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

Subpart A—Delivery of Personnel

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6021, Mar. 6, 1973, unless otherwise noted.

Subpart A—Delivery of Personnel

§ 720.1 Delivery when personnel within territorial limits of the requesting State.

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in § 720.8.

§ 720.2 Delivery when personnel beyond territorial limits of requesting State.

(a) *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, upon compliance with the provisions of this part and § 720.5, and subject to the exceptions in § 720.8 to deliver such person for the purpose of making him amendable to prosecution. The serviceman may be delivered upon formal and informal waiver of extradition in accordance with paragraph (b) of this section, or upon presentation of a fugitive warrant, in which case the procedures of paragraph (c) apply.

(b) *Waiver of extradition.* (1) Any person may waive formal extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in paragraph (c) of this section.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after execution.

(4) When an individual declines to waive extradition, the nearest naval legal service office or Marine Corps Staff Judge Advocate shall be informed and shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, without the permission of the Secretary of the Navy (Judge Advocate General), until the matter of extradition is resolved.

(c) *Fugitive warrants.* (1) A fugitive warrant, as used in this part is a warrant for the arrest of an individual issued by a State court of competent jurisdiction. Normally, a State requesting delivery of a serviceman from another State will issue a fugitive warrant to the State where the serviceman is located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the serviceman is located, the latter State will normally request delivery of the serviceman to local State authorities. Delivery to local State officials should be arranged by Navy or Marine Corps officers designated in paragraph (a) of this section and subject to the condi-

tions of § 720.8 and (c) paragraph (3) and (4) of this section.

(3) Upon receipt of such a request for delivery of a serviceman under fugitive warrant to such State authorities, if such serviceman voluntarily waives extradition, the provisions of paragraph (b) of this section apply. If waiver is refused, the serviceman, after delivery to local State authorities, will then have the opportunity to contest extradition in the courts of the State in which he is located. Where waiver is refused, the nearest naval legal service office or Marine Corps Staff Judge Advocate is responsible for effecting liaison with officials of both the requesting State and State in which the serviceman is located. The provisions of paragraph (b)(4) of this section regarding transfer of the serviceman apply while State authorities are actively proceeding to effect extradition.

(4) No delivery of a serviceman by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by § 720.5 and execution of such agreement by officials of both the requesting State and the State in which the serviceman is located or execution of such agreement by officials of the State in which the man is located where such officials accept on behalf of such State the full responsibility for returning the individual to the designated military command.

(d) *Personnel stationed outside of the United States.* When the serviceman sought by State authorities is not located within a State, Territory, or Commonwealth of the United States, see § 720.3.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26860, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

§ 720.3 Personnel stationed outside the United States.

(a) *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with § 720.1 or § 720.2, as applicable.

(b) *Personnel desired by Federal authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

§ 720.4 JAG Authority.

The Judge Advocate General, the Deputy Judge Advocate General or

any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under §§ 720.1, 720.2, 720.3, 720.5, 720.8, 720.15, 720.20, 720.23, and 720.30.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6021, Mar. 6, 1973, as amended at 41 FR 26861, June 30, 1976; 45 FR 8599, Feb. 8, 1980]

§ 720.5 Agreement required prior to delivery to State authorities.

In every case in which the delivery of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in Appendix A-13-b of the Manual of the Judge Advocate General. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which he is attached) which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation (under escort in case of delivery in accordance with § 720.15) back to a naval or Marine Corps activity as set forth herein, cash necessary to cover his incidental expenses en route thereto, and the Department of the Navy is so informed. Any departure from the agreement set forth in Appendix A-13-b of the Manual of the Judge Advocate General must have prior approval from the Secretary of the Navy (Judge Advocate General).

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26861, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

§§ 720.6—720.7 [Reserved]

§ 720.8 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers must obtain specific authority from the Secretary of the Navy (Judge Advocate General) to deliver personnel to Federal, State, Territory, Commonwealth, or local authorities.

(b) *When delivery may be refused.* Delivery may be refused in the following circumstances:

(1) Where the accused has been retained for prosecution as set forth in section 0107(g)(3)(a) of the Manual of the Judge Advocate General of this chapter.

(2) When the commanding officer considers that extraordinary circumstances exist which indicate that delivery should be denied.

(c) *Delivery under Detainers Act.* Where the accused is undergoing a sentence of a court-martial, see § 720.15.

(d) *Reports required.* When delivery is refused, see section 1310 of the Manual of the Judge Advocate General.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26861, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

§§ 720.9—720.11 [Reserved]

§ 720.12 Personnel released by civil authorities on bail or on their own recognizance.

A person in the Navy or Marine Corps arrested by Federal, State, or territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or lease to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

§§ 720.13—720.14 [Reserved]

§ 720.15 Request for delivery of personnel serving sentence of court-martial.

(a) *General.* The Interstate Agreement on Detainers Act (18 U.S.C.A. App.) makes the Federal Government a party to the Interstate agreement which is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for the prisoner to be tried on charges pending in another State, either at the prisoner's request or at the request of the State where charges are pending.

(b) *Liaison with State and Federal officials.* Upon request by either the prisoner or State or Federal authorities, the Director of the nearest naval legal service office or Marine Corps judge advocate, as appropriate shall effect liaison with the appropriate State or Federal officials and shall monitor and take action on all such requests. The agreement described in § 720.5 will be required as a condition precedent to delivery to the State authorities. While requests between federal authorities are not covered by the Act, the same rules shall generally apply except that no such agreement is required.

(c) *Timeliness of delivery.* After request has been made, a prisoner shall be released to State or Federal officials as soon as practicable (after the court-martial sentence is announced). If the sentence is not final, the accused must be given the opportunity to request or decline to request, in writing, to remain in military custody to aid in his court-martial appeal. Such request normally will be granted.

(d) *Article V of the Detainers Act.* Nothing in the Detainers Act generally or in Article V(e) specifically requires the automatic return of a military prisoner, delivered to the temporary custody of State or Federal officials and thereafter convicted by a civilian tribunal, to military authorities either prior to or after the execution of the civilian sentence where military authorities do not request such a return. Military authorities may request the return of a military prisoner delivered to civilian temporary custody under the Act, and such prisoner should be returned upon completion of civilian prosecution. If such prosecution results in conviction and sentencing by the civilian tribunal, such civilian sentence shall not be served by a military prisoner (whose return prior to sentence has been requested by military authorities) until after completion of the court-martial sentence. If return prior to civilian sentence is not requested and is not otherwise effected, conviction in a civil tribunal interrupts the execution of the sentence of the court-martial. A military prisoner whose return after serving his civilian sentence is requested by military authorities shall be returned and be required to serve the remaining portion of the court-martial sentence. See 10 U.S.C. 814(b). However, nothing requires military authorities to request such a return even when a portion of the court-martial sentence may remain uncompleted. Where return is not to be requested, consideration should be given to the separation of the military prisoner under applicable directives or regulations.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26861, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

Subpart B—Service of Process and Subpoenas Upon Personnel of the Naval Establishment

§ 720.20 Service of process upon personnel.

(a) *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or territory out of which the process issues are considered within the jurisdiction of that State or territory for the purpose of service of process. The commanding

officer shall permit the service of process except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will insure that the nature of the process is explained to the person concerned.

(b) *Personnel beyond the jurisdiction of the court.* (1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in paragraph (a) of this section for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will insure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

(c) *Service of process arising from official duties.* (1) If the service of process involves a potential claim against the Government, see §§ 750.21(a) and (b) and 750.32 of this chapter. While the right to remove to Federal court under 28 U.S.C. 1442 and 1442a requires color of office, which is considered to be more than simple scope of employment, this right must be fully explored in all situations where the outcome of the State court action may influence a claim or potential claim against the United States.

(2) Whenever a Government employee (as defined in § 750.31(a) of this chapter) is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of his official duties, he shall immediately deliver all process and pleadings served upon him to his commanding officer. The commanding officer shall thereupon ascertain the facts surrounding the incident and with the advice of a Navy or Marine Corps judge advocate, if one is reasonably available, take appropriate action in accordance with JAGINST 5822.2 of February 2, 1962, Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings. The Government employee will be advised concerning his right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442 and 1442a, his rights under the Federal Driver's Act (28 U.S.C. 2679B), and the contents of JAGINST 5822.2.

(3) Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General shall be notified by message or telephone. This notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. For lawsuits filed in the U.S. District Court, Washington, D.C., the Air Force has been assigned responsibility for accepting service of process for the Navy. In habeas corpus cases, liaison with the U.S. attorney assigned to protect the Navy's interests will be maintained through the Judge Advocate General after the initial notification prescribed by section 1314 of the Manual of the Judge Advocate General.

(d) *Service of process of foreign courts.* (1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846). Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General. Service of process when the United States Government or one of its agencies or instrumentalities is the named defendant may involve a situation where the doctrine of sovereign immunity will allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, whether or not the suit involves acts performed in the course of official duties. When the report required by section 1325 of the Manual of the Judge Advocate General is made, the Judge Advocate General will make arrangements through the Department of Justice for defense of a suit against the United States or an official acting within the scope of his official duties, or other appropriate arrangements, and will issue appropriate instructions.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with paragraph (c) of this section. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of paragraph (a), of this section, will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

(e) *Leave or liberty to be granted persons served with process.* In those cases where personnel are served with process, as noted in subsection a above, or accept service of process, as noted in paragraph (b) of this section, the commanding officer normally should grant leave or liberty to the person served in order to permit him to comply with the process; provided, such absence will not prejudice the best interests of the naval service.

(f) *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if condi-

tions warrant) to the Secretary of the Navy (Judge Advocate General) RCS JAG 5821-8.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6021, Mar. 6, 1973, as amended at 41 FR 26862, June 30, 1976, 45 FR 8599, Feb. 8, 1980]

§ 720.21 Personnel subpoenaed as witnesses in State or local courts.

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in § 720.20, the provisions of § 720.20(e) apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases) the procedures described in section 1322(a) of the Manual of the Judge Advocate General may be followed.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6021, Mar. 6, 1973, as amended at 45 FR 8599, Feb. 8, 1980]

Subpart C—Production of Official Records

§ 720.30 Production of official records in response to court order.

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of all parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order except as noted in paragraphs (b) and (c) of this section. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified.

(b) *Records in the custody of National Personnel Records Center.* Court orders, *subpoenas duces tecum,* and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard; St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) *Exceptions.* Where not in conflict with the foregoing restrictions relative to confidential matters, the production in Federal, State, territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. Where travel is involved, it must be without expense to the Government.

(d) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Execu-

tive Order 10561, 19 FR 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1-4 (reprinted in MANMED article 23-255(6)). Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or otherwise confidential material such as loyalty or security records. Records relating to compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed except upon the written approval of that Bureau (20 CFR 1.21). In case of doubt, the matter should be handled in accordance with the provisions of subsection a above. Where information is furnished hereunder in response to a court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the U.S. Attorney or U.S. Marshal be requested so that custody of the records may be maintained.

§ 720.31 Production of official records in the absence of court order.

(a) *General.* Release of official records outside the Department of the Navy in the absence of a court order is governed by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). The following sources pertain: SECNAVINST 5211.5 series (Privacy) and SECNAVINST 5720.42 series (Freedom of Information).

(b) *Release of JAG Manual Investigations, Court-Martial Records, Articles 69 and 73 Petitions, and Article 138 Complaints of Wrongs.* Except as provided in this section, only the Assistant Judge Advocate General (Civil Law) shall make determinations concerning the release of the records covered herein. Local record holders are reminded that the authority to release records does not include denial authority.

(1) *JAG Manual Investigations (including enclosures).* Any request for release outside the Department of the Navy shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination, except that Privacy Act requests for release shall be forwarded to the Assistant Judge Advocate General (Civil Law) for determination. *Exception:* Affirmative claims files (including Medical Care Recovery Act files) may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party's and the government's interests; and to other components of the Department of Defense, without prior approval of the Judge Advocate General, provided the amount of the claims is within the monetary settlement authority of the releaser.

(2) *Court-martial records and Articles 69 and 73 petitions.* These are matters of public record and may be released by any local holder. Court-martial records should be released only following proper authentication.

(3) *Article 138 Complaints of Wrongs.* Forward as in b.1 above.

(c) *Accounting for disclosures of records from systems of records.* When records located in a "system of records" are released, the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a of the Manual of the Judge Advocate General is recommended for this purpose.

(1 CFR 18.14, and Part 21, Subpart B)

[45 FR 8599, Feb. 8, 1980]

§ 720.32 Certificates of full faith and credit.

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

PART 721—STANDARDS OF CONDUCT

Sec.

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 133 and 5031; E.O. No. 11222, May 8, 1965; 5 CFR Part 735; 32 CFR Part 40.

SOURCE: 42 FR 43070, Aug. 26, 1977, unless otherwise noted.

§ 721.1 Purpose.

Part 721 implements and supplements Part 40 of this title in prescribing required standards of ethical conduct governing all personnel of the Department of the Navy; related requirements applicable to all personnel of certain categories in the Department of the Navy; amplifying policies for the guidance of personnel in interpreting and executing the standard of conduct and related requirements; and responsibilities and procedures for monitoring and enforcing compliance with the standards of conduct and related requirements within the Department of the Navy.

§ 721.2 [Reserved]

§ 721.3 Scope and effect.

(a) *Applicability.* The provisions of this part apply to all naval personnel as defined in § 721.4(a). The provisions of § 721.6(1)(2) apply to all retired naval personnel and members of Reserve components. The provisions of § 721.12 also apply to all retired Regular officers.

(b) *Violations.* The regulations prescribed in § 721.6 are a general order upon which disciplinary or punitive proceedings may be based in appropriate cases. Noncompliance with other provisions of this part are expected to be corrected by timely and appropriate administrative measures.

§ 721.4 Definitions.

(a) *Naval personnel.* All civilian officers and employees and all active-duty military personnel of the Department of the Navy, including special Government employees and personnel of nonappropriated fund instrumentalities.

(b) *Department of Defense (DOD) components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies, including nonappropriated fund instrumentalities.

(c) *Special government employee.* A person who is retained, designated, appointed, or employed to perform with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties, on either a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefit—for example, discounts, passes, and promotional vendor training—given or extended to, or on behalf of, naval personnel or their spouses, minor children, or households, for which fair market value is not paid by the recipient or the U.S. Government.

(e) *Appropriate supervisor.* That superior within the chain of authority who is acquainted with the duties of the naval personnel concerned and can best determine the existence and effect of any conflict of interests of such personnel. Ordinarily, this will be the immediate superior of the person concerned. Each commanding officer or activity head should ensure that all personnel are aware of the identity of their appropriate supervisor.

§ 721.5 General policies governing the conduct of naval personnel.

(a) *Proper conduct of official activities.*

(1) Naval personnel shall become familiar with the scope of authority for, and the limitations concerning, the activities for which they have responsibilities.

(2) The attention of naval personnel is directed to the appropriate statutory prohibitions which apply to the conduct of naval personnel.

(3) Naval personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S. laws, Executive Orders, or applicable directives, instructions, or regulations.

(4) In cases of doubt of the propriety of a proposed action or decision in terms of regulation or law, naval personnel shall consult legal counsel or, if appropriate, a Standards of Conduct Counsellor or Deputy Counsellor to ensure the proper and lawful conduct of naval programs and activities.

(b) *Conduct prejudicial to the Government.* Naval personnel shall avoid any action, whether or not specifically prohibited by this part, which might result in or reasonbly be expected to create the appearance of:

(1) Using public office for private gain:

(2) Giving preferential treatment to any person or entity;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) *Standards of personal judgment.* All naval personnel will adhere strictly to the standards of conduct and related requirements prescribed in this part. In some instances, standards are imposed which require the exercise of personal judgment. Naval personnel must consider each such instance carefully and be prepared to account for the manner in which the judgment is exercised. This is particularly true in situations which involve acceptance of hospitality or favors from persons or entities who do, or seek to do, business with the Department of Defense.

(d) *Dealings with business and industry representatives.* Persons who represent the Government in business dealings with representatives of industry have positions of trust and grave responsibility which require them to observe the highest ethical standards. Practices which may be accepted in the private business world are not necessarily acceptable for naval personnel. No person will allow himself to be placed in a position in which a conflict of interests might arise or might justifiably be suspected. Such a conflict of interests may arise or appear to arise by reason of the acceptance of gratuities, or by any other action which could influence or reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Government. Strict impartiality is often particularly difficult to maintain when business relationships are allowed to become overly personal. Naval personnel should at all times ensure that persons doing business or attempting to do business with the Department of Defense, or representing such entities, are not permitted to ingratiate themselves to the extent that naval personnel hesitate to deny requests for special treatment made by such persons or otherwise to follow the rule of strict impartiality when dealing with such persons in their official capacities. Acceptance of gratuities (no matter how innocently tendered or received) from those who have or seek business dealings with the Department of the Navy may be a source of embarrassment to the department and to the naval personnel involved, may affect the objective judgment of the recipient, and may impair public confidence in the integrity of business relations between the department and industry. It is emphasized that prohibited conflicts and apparent conflicts of interests can sometimes arise even from relationships and transactions which the personnel concerned preceive as inconsequential. Where there is doubt as to the propriety of accepting gratuities, attending functions, or accepting other invitations of a hospitable

nature, naval personnel will refrain therefrom.

(e) *Preferential treatment.* Special treatment must not be accorded to particular individuals or firms unless equivalent treatment is also accorded to other individuals of firms justifiably entitled thereto.

(f) *Acquiring conflicting financial interests.* Notwithstanding the fact that they may have filed confidential statements of affiliations and financial interests (DD Form 1555), naval personnel must at all times avoid acquiring or retaining financial interests which would disqualify them from performing their assigned duties or responsibilities. Some of the more likely situations in which conflicts of interests might arise are where naval personnel have Government duties or responsibilities related to business entities:

(1) With which they, or their spouses, minor children, or household members are associated as employees, officers, owners, directors, members, trustees, partners, advisers, or consultants;

(2) With which they, or their spouses, minor children, or household members are negotiating or have arrangements for prosective employment; or

(3) In which they, or their spouses, minor children, or household members have interests through ownership of stock options, bonds, securities or other financial arrangements, such as trusts, or through participation in pension or retirement plans.

(g) *Membership in associations.* Naval personnel who are members or officers of non-Governmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions. Secretary of the Navy Instruction (SECNAVINST) 5760.4 (series) sets forth the Department of the Navy policy regarding participation by naval activities and naval personnel in the activities of private associations.

(h) *Equal opportunity.* Naval personnel shall scrupulously adhere to the DoD program of equal opportunity regardless of race, color, religion, sex, age, or national origin, in accordance with equal opportunity directives. See, for example, SECNAVINST 5350.6 (series) and SECNAVINST 5350.10 (series).

(i) *Reporting suspected violations.* Naval personnel who have information which causes them to believe that other DoD personnel have violated a statute or standard of conduct imposed by this part should bring the matter to the attention of the appropriate command authority. The matter thereafter should be brought to the attention of the person concerned, for possible resolution without further command action, unless the command determines that such communication is not likely to remedy the problem or will adversely affect a proper investigation of the matter.

(j) *Resolving violations.* The resolution of standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination, or other appropriate action, as provided by statute or administrative procedures. Disciplinary actions shall be in accordance with established personnel procedures. See § 721.6(a).

§ 721.6 Regulations governing the conduct of naval personnel.

(a) *Affiliations and financial intersts.* Naval personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their official positions. For the purpose of this prohibition, the private interests of a spouse, minor child, and any household member are treated as private interests of the naval personnel.

(1) Unless otherwise expressly authorized by action taken under 18 U.S.C. 208(b), all naval personnel who have or acquire an affiliation or a financial interest which creates a conflict or appearance of a conflict with their official duties shall report the possibly disqualifying interest to the

appropriate supervisor, who shall resolve the matter in accordance with this part. If it is determined that the individual should be disqualified from participation in any official activities that are related to the conflicting interest, a formal disqualification notice must be sent to the concerned individual's appropriate supervisor and immediate subordinates. If the individual cannot adequately perform his official duties after such disqualification, he must divest himself of such involvement or be removed from that position.

(2) Naval personnel need not disqualify themselves under this section, however, for holding shares of a widely held, diversified mutual fund or regulated investment company. Such holdings are exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

(b) *Using inside information.* Naval personnel shall not use, directly or indirectly, inside informaion to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DoD positions.

(c) *Using naval position.* Naval personnel are prohibited from using their official positions to induce, coerce, or in any manner unlawfully influence any person, including subordinates, to provide any benefit, financial or otherwise, to themselves or others.

(d) *Dealing with present and former military and civilian personnel.* Naval personnel shall not knowingly deal on behalf of the Government with present or former Government personnel, military of civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this part. While all applicable prohibitions are within the prohibition established by this paragraph, attention is directed to the prohibition on retired Regular officers selling to the Government through the department in which they hold a retired status, 18 U.S.C. 281; the prohibition on former personnel acting as an agent or attorney for anyone other than the United States in connection with "claims" against the Government, 18 U.S.C. 207; and the prohibition on paying appropriated funds to retired Regular officers who are "selling" to certain Government agencies, 37 U.S.C. 801(c).

(e) *Commercial soliciting by naval personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time naval personnel, except special Government employees and Reserve enlisted personnel on active duty for training, are prohibited from making personal commercial solicitations or sales to DoD personnel who are junior in rank or grade, at any time, on or off duty.

(1) This limitation includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(2) This prohibition is not applicable to the one-time sale by an individual of his own personal property or privately owned dwelling, or to the off-duty employment of naval personnel as employees in retail stores or other situations not including solicited sales.

(3) With regard to solicitation by and of civilian personnel, the limitation applies only to solicitation of personnel under the supervision, at any level, of the solicitor.

(f) *Assignment of Reserve personnel for training.* Naval personnel who are responsible for assigning Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(g) *Gratuities.* (1) Except as provided in paragraph (g)(2) of this section, naval personnel and their spouses, minor children, and members of their households shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from, or on behalf of, a defense contractor. A defense contractor is a person or other entity which:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD component;

(ii) Conducts operations or activities that are either regulated by a DoD

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component or significantly affected by DoD decisions; or

(iii) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DoD personnel.

(2) This general prohibition does not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate Standards of Conduct Counsellor;

(ii) The acceptance of unsolicited advertising or promotional items that are less than $5 in retail value;

(iii) Trophies, entertainment, prizes, or awards for public service or achievement or given in games or contests which are clearly open to the public or which are officially approved for naval personnel participation;

(iv) Things available to the public (such as university scholarships covered by DoD Directive 1322.6 and free exhibitions by Defense contractors at public trade fairs);

(v) Discounts or concessions extended Navy- and Marine Corps-wide and realistically available to all naval personnel;

(vi) Participation by naval personnel in civic and community activities when the involvement of Defense contractors is remote from the business purposes of any contractor who is sponsoring, supporting, or participating in the activity (for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by a Defense contractor);

(vii) Social activities engaged in by officers in command and other naval officials, or their representatives, with local civic leaders as part of community relations programs of the Department of the Navy in accordance with SECNAVINST 5720.44 (series) (Part 705 of this chapter);

(viii) The participation of naval personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors): *Provided,* That they have been approved in accordance with DoD Instruction 5410.20;

(ix) Situations in which by naval personnel at public ceremonial activities of mutual interest to industry or local communities and the Department of the Navy serves the interests of the Government and acceptance of the invitation is approved by the commanding officer or other head of the activity to which the invitee is attached;

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable and the individual reports the circumstances in writing to his appropriate supervisor as soon as possible;

(xi) Attendance at promotional vendor training sessions when the vendor's products or systems are provided under contract to DoD and the training is to facilitate the utilization of those products or systems by naval personnel;

(xii) Attendance or participation of naval personnel in gatherings, including social events such as receptions, which are hosted by foreign governments or international organizations: *Provided,* That the acceptance of the invitation is approved by the commanding officer or other head of the activity to which the invitee is attached or, when there is doubt as to the propriety of acceptance by higher authority (see SECNAVINST 1650.1 (series) for further information pertaining to gifts from foreign governments);

(xiii) Customary exchanges of gratuities between naval personnel and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gratuity and where it is clear that the gratuity is not paid for by any entity described in paragraph (g)(1) of this section; and

(xiv) Situations in which, in the sound judgment of the individual concerned or his superior, the Government's interest will be served by naval

personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made by the individual or his appropriate superior in advance of acceptance, or, when an advance report is not possible within 48 hours after acceptance, to the appropriate supervisor, if he is not otherwise aware of the acceptance, and to the appropriate Standards of Conduct Counsellor or Deputy Counsellor.

(3) Naval personnel who receive gratuities, or have gratuities received for them, in circumstances not in conformance with the standards of this section, shall promptly report the circumstances to the appropriate supervisor for a determination as to the proper disposition. The appropriate supervisor shall consult with the Standards of Conduct Counsellor or Deputy Counsellor.

(4) Procedures with respect to ROTC staff members are set forth in DoD Directive 1215.8.

(h) *Receipts in connection with official travel.* (1) The acceptance of accommodations, subsistence, or services, furnished in kind, in connection with official travel from sources other than those indicated in paragraph (g)(1) of this section, is authorized only when the individual is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended and when such attendance and acceptance is authorized by the order-issuing authority as being in the overall Government interest.

(2) Except as indicated in paragraph (h)(1) of this section, naval personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their commanding officer or the head of their activity, consistent with guidance provided by the appropriate Standards of Conduct Counsellor (pursuant to 5 U.S.C. 4111 or other authority). Rather, reimbursement must be made to the Government by check payable to the Treasurer of the United States. Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement.

(3) In no case shall naval personnel accept reimbursement, either in kind or in cash, which is extravagant or excessive in nature.

(4) When accommodations, subsistence, or services in kind are furnished to naval personnel by non-Government sources, consistent with this paragraph, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable.

(i) *Speaking, lecturing, writing, and appearance as expert witness.* (1) Except as provided in paragraph (h) of this section (and further qualified in paragraph (m) of this section), naval personnel are prohibited from accepting fees, reimbursements, or honoraria for speaking, lecturing, or writing, or for appearing as expert witnesses before State agencies, except in instances where all the following conditions exist:

(i) Acceptance of the payment from the person or entity tendering or funding it would not be prohibited under paragraph (g) of this section;

(ii) The individual presents himself as a private citizen and not in an official capacity;

(iii) Such private activities do not interfere with the individual's official duties; and

(iv) The individual's appearance or writing is not part of his official duties, does not involve materials which his official duties require him to prepare or provide, and does not depend on information obtained as a result of Government employment, except when that information has been published or is generally available to the public upon request, or it will be made generally available to the public and the official authorized to release such information to the public gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(2) Unless there is a definite Executive Branch, Department of Defense, or Department of the Navy position on a matter addressed in the appearance or writing and the individual has been authorized by appropriate superior authorities to present that position officially, he shall expressly present his views on that matter as his own and not as those of the Department of the Navy or Department of Defense.

(j) *Prohibition of contributions or presents to superiors.* Naval personnel shall not solicit a contribution from other DoD personnel for a gift to an official superior, make a donation or a gift to an official superior, or accept a gift from other DoD personnel subordinate to themselves. This section, however, does not prohibit voluntary gifts or contributions of nominal value on special occasions such as marriage illness, transfer, or retirement, provided any gifts acquired with such contributions shall not exceed a reasonable value.

(k) *Use of Government facilities, property, and manpower.* Naval personnel shall not directly or indirectly use, take, dispose, or allow the use, taking, or disposing of, Government property or facilities of any kind, including property leased to the Government, for other than officially approved purposes. Government facilities, property, and manpower (such as stationery, stenographic and typing assistance, mimeograph and chauffeur services) shall be used only for official Government business. Naval personnel have a positive duty to protect and conserve Government property. These provisions do not preclude the use of Government facilities for approved activities in furtherance of naval community relations, provided they do not interfere with military missions or Government business. See SECNAVINST 5720.44 (series) (Part 705 of this chapter) for community relations guidance.

(l) *Use of civilian and military titles or positions in connection with commercial enterprises.* (1) All naval personnel, except special Government employees, are prohibited from using their grade, rank, title, or position in connection with any commercial enterprise or in endorsing any commercial product. This does not preclude author identification for materials published in accordance with DoD procedures. A commercial enterprise is any entity which engages in activities which produce income as defined in Internal Revenue Code of 1954, section 61, and which has not been exempted from paying income taxes pursuant to Internal Revenue Code of 1954, 501(a).

(2) All retired military personnel and all members of Reserve components, not on active duty, are permitted to use their military titles in connection with commercial enterprises, provided that they indicate their inactive Reserve or retired status. If, however, such use of military titles in any way casts discredit on the Department of the Navy or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Department of the Navy or the Department of Defense, it is prohibited. In addition, commanders of overseas installations may further restrict the use of titles including use by retired military personnel and members of Reserve components, not on active duty, in overseas areas.

(m) *Outside employment of DoD personnel.* (1) Naval personnel shall not engage in outside employment or other outside activity, with or without compensation, that:

(i) Interferes with, or is not compatible with, the performance of their Government duties;

(ii) May reasonably be expected to bring discredit on the Government or the Department of the Navy; or

(iii) Is otherwise inconsistent with the requirements of this instruction, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) Enlisted naval personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(3) Active duty Regular officers of the Navy or Marine Corps may not be employed by any person furnishing naval supplies or war materials to the United States. If such an officer is so employed, his entitlement to pay ceases for so long as he is so employed.

(4) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this

part. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(5) Naval personnel are encouraged to engage in teaching, lecturing and writing. Naval personnel, however, shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when the information has been published or is generally available to the public, or it will be made generally available to the public and the official authorized to release such information to the public gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(6) Civilian Presidential appointees in the Department of the Navy shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to naval responsibilities, programs, or operations or which draws substantially from official material which has not become part of the body of public information.

(n) *Gambling, betting, and lotteries.* While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, naval personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property, or the sale or purchase of a number slip or ticket. The only exceptions are for activities which have been specifically approved by the Secretary of the Navy.

(o) *Indebtedness.* Naval personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, State, and local taxes), so that their indebtedness does not adversely affect the Government as their employer. The Department of the Navy is not required to determine the validity or amount of disputed debts.

§ 721.7 Related statutes and directives.

Attention is directed to the following related matters governed by other directives:

(a) *Reports of defense related employment.* Certain categories of present naval personnel formerly employed by defense contractors, and of former or retired naval personnel presently employed by defense contractors, are required by statute to report their employment—governmental or private. SECNAVINST 5314.5 (series) (Part 722 of this chapter) implements the statutory requirements, provides a form for making the required report (DD Form 1787), and assigns responsibility for ensuring compliance with the filing requirement with commanding officers and other heads of activities. The reports prescribed in SECNAVINST 5314.5 (series) (Part 722 of this chapter) are distinct from the reports or statements prescribed in this part, and failure to file them when required may subject individuals to criminal penalties.

(b) *Political activities.* Chapter 733 of the Federal Personnel Manual, article 6210240 of the Bureau of Naval Personnel Manual, and paragraph 1742.3 of the Marine Corps Manual discuss restrictions on political activities of naval personnel.

(c) *General responsibilities of naval personnel.* Chapter 11 of Navy Regulations, 1973 (Subpart J of Part 700 of this chapter), prescribes general regulations governing the rights and responsibilities of naval personnel. If any provisions of this part is found to conflict with a provision of Navy Regulations, the latter shall be controlling.

§ 721.8 Responsibilities for action.

(a) *Under Secretary of the Navy.* The Under Secretary of the Navy is assigned overall responsibility for action relating to standards of conduct of naval personnel. Unless a function is specifically reserved herein to the Secretary, the Under Secretary shall act as the designee of the Secretary, with power to redelegate. Specific matters for action by the Under Secretary or his delegee include:

(1) Resolution of conflicts or apparent conflicts found in statements of employment and financial affiliations not resolved at lower echelons; (2) extensions of time in excess of 30 days

for the submission of such statements; (3) exclusion of positions from the requirement to file DD Forms 1555, except as delegated to commanding officers and other activity heads in § 721.9(k); and (4) the notification to the Department of Defense required by § 721.9(b)(2).

(b) *Navy Department officials.* The Chief of Naval Operations, the Commandant of the Marine Corps, and the heads of Navy Department offices not under the control of chief of Naval Operations or Commandant of the Marine Corps shall provide the Under Secretary of the Navy by December 15 of each year with the information regarding naval personnel within their chain of command required to be included in the report by the Under Secretary pursuant to § 721.9(b)(2).

(c) *Commanding officers and heads of activities.* The basic responsibility for complying with the requirements of this part rests with the individual personnel concerned, but the primary responsibility for ensuring such compliance must rest with officers exercising command or similar authority over personnel. Each commanding officer or head of a command, bureau, office, or activity is specifically responsible for the following:

(1) The continuing dissemination of the applicable information in this part to all naval personnel within his organization at least semiannually, in a manner which will ensure familiarity and compliance with the pertinent provisions of this part by all personnel (this is a continuing requirement and is in addition to the initial briefing required by § 721.10);

(2) The establishment and continuing execution of the procedures and controls prescribed in § 721.9, to ensure that each position is reviewed as required by § 721.9(j), that all naval personnel within his organization who are required to file confidential statements of affiliations and financial interests (DD Form 1555) do file them in a timely manner, and that such statements are promptly and carefully reviewed;

(3) Making determinations pursuant to this part and 18 U.S.C. 208(b) with respect to disqualification of personnel within his organization from performing duties in which they have conflicts or apparent conflicts of interests;

(4) Ensuring that Reservists detailed to perform active duty for training at his organization are assigned duties which will minimize the possibility that they may obtain information that could be used by them or their employers to gain an unfair advantage over civilian competitors; and

(5) Receiving and taking prompt and appropriate action on reports concerning acceptance of gratuities or other violations of this part, including appropriate statutes, by personnel within his organization.

(d) *Inspectors General.* The Naval Inspector General and the Inspector General of the Marine Corps shall ensure that periodic administrative inspections or organizations under their congizance routinely include inquiry into the effectiveness of the organization's compliance with the provisions of this part.

(e) *Auditor General.* The Auditor General of the Navy shall ensure that the Naval Audit Service audit program routinely includes inquiry into the effectivenes of the organization's compliance with the provisions of this part.

(f) *Judge Advocate General and General Counsel.* The Judge Advocate General and the General Counsel of the Navy are designated as the Standards of Conduct Counsellors for the Department of the Navy. They shall be responsible for advice and proper review of all standards of conduct problems within their respective areas of jurisdiction. The General counsel shall be consulted concerning problems pertaining to:

(1) Contracting, procurement, or auditing;

(2) Acquisition, management, or disposition of real or personal property;

(3) Procurement matters in the field of patents, inventions, trademarks, or copyrights;

(4) Military Sealift Command matters; or

(5) Office of the Comptroller of the Navy matters.

In addition, the General Counsel shall perform all standards of conduct functions pertaining to the Secretary of

the Navy, his Civilian Executive Assistants, and members of their respective staffs. The Judge Advocate General shall be consulted with regard to all other problems.

(g) *Deputy Standards of Conduct Counsellors.* The following are designated as Deputy Standards of Conduct Counsellors and shall be responsible for providing advice and assistance on matters relating to conduct and conflicts of interests, and for providing legal review of statements of affiliations and financial interests which are referred to them:

(1) Within the cognizance of the General Counsel, and in their respective commands or organizations:

Deputy General Counsels;
Assistant to the General Counsel (Litigation);
Counsel for the Commandant of the Marine Corps;
Counsel for the Systems and Facilities Engineering Commands;
Counsel for the Comptroller of the Navy;
Counsel for the Military Sealift Command;
Counsel for the Office of Naval Research; and
Counsel in charge of OGC field and branch offices; and

(2) Within the cognizance of the Judge Advocate General, and in their respective commands or organizations:

Deputy and Assistant Judge Advocates General;
Director, Judge Advocate Division, Headquarters, U.S. Marine Corps;
Officer and civilian attorneys under the supervision of the Judge Advocate General, and assigned to the commands, bureaus, and offices of the Navy Department, as defined in article 0104.3, U.S. Navy Regulations, 1973, (§ 700.104(c) of this title) other than the Office of the Judge Advocate General;
District judge advocates;
Staff or force judge advocates on the staffs of all other commands having general court-martial convening authority; and
Officers in charge of Naval Legal Service Offices.

Other Deputy Standards of Conduct Counsellors may be designated by the General Counsel or by the Judge Advocate General, as required. Where strict adherence to the division of areas of responsibility under § 721.8(f) is impracticable due to such factors as inaccessibility or uncertainty as to jurisdiction, any Deputy Standards of Conduct Counsellor may be consulted. In such a case, the Deputy Standards of Conduct Counsellor will render all possible assistance and then, if appropriate, direct the inquiry into the proper area of responsibility.

(h) *Director of Civilian Personnel.* The Director of Civilian Personnel shall incorporate the provisions of this part concerning civilian employees in appropriate Civilian Personal Instructions.

(i) *Additional duties of senior officials.* The Commandant of the Marine Corps and the Chief of Naval Material, as appropriate, are responsible for bringing the contents of this part to the attention of the principal officer of each contractor doing significant business with the Department of the Navy. Chiefs and heads of commands, bureaus, and offices, commanding officers, and other senior officials shall periodically utilize the opportunity afforded by conferences with representatives of industry to direct attention to the regulations and policies set forth in this part.

§ 721.9 Statements of affiliations and financial interests (DD Form 1555).

(a) *Personnel required to file.* The following naval personnel are required to submit initial and annual statements of affiliations and financial interests, DD Form 1555 in accordance with this part unless they are expressly exempted.

(1) All civilian naval personnel paid at a rate equal to or in excess of the minimum rate prescibed for employees holding the grade GS-16, including the Executive Schedule.

(2) Officers of flag or general grade.

(3) Commanding officers or heads, and executive officers or deputy heads, of:

(i) Navy shore installations with 500 or more military and civilian personnel (including foreign national and indirect-hire personnel) regularly attached but excluding personnel attached for duty under instruction; and

(ii) all Marine Corps bases and air stations.

(4) Naval personnel classified at GS-13 or above, or at a comparable pay rate under other authority, and mem-

bers of the military in the grade of lieutenant colonel, commander, or above, when the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity. Included herein, among others, are persons who, as part of their basic duties, sign, negotiate, recommend, or approve contracts or other procurement actions and those who, as part of their basic duties, are engaged in auditing activities, including supervising others who are engaged in auditing activities or participating in the development of policies and procedures for performing audits.

(5) Special Government employees other than those in the following categories (who may, in any case, be required to file when specifically requested to do so by their appropriate supervisor):

(i) A special Government employee who is not a "consultant" or "expert" as those terms are defined in Chapter 304 of the Federal Personnel Manual.

(ii) Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

(iii) Veterinarians providing only veterinary services.

(iv) Lecturers participating only in educational activities.

(v) Chaplains performing only religious services.

(vi) Individuals in the motion picture and television fields who are utilized only as narrators or actors in DoD productions.

(vii) Members of selection panels for NROTC candidates.

(6) Other naval personnel who are required, with Civil Service Commission approval, to file such statements.

(b) *Time of filing*--(1) *Initial filing.* The initial filing must be made sufficiently in advance of appointment (in the case of special Government employees), nomination (in the case of designees to positions requiring the approval of the Secretary of the Navy), or the commencement of service or the assumption of duties (in all other cases), so that review and approval of the filing may be completed in advance of appointment, nomination, or commencement of service or assumption of duties. Each officer or employee required to file a statement shall submit it in the prescribed form directly to his appropriate supervisor. In the case that the appropriate supervisor is not the commanding officer or the head of the activity concerned, the appropriate supervisor will ensure that the commanding officer or other head is made aware of any conflict of interest or other matter of which he must be aware to fulfill his responsibilities under § 721.8(c). Upon transfer or reassignment from one billet or position to another for which the filing of a statement is required, an officer or employee shall file a current statement promptly with the appropriate supervisor of his new billet or position.

(2) *Annual statements.* DD Form 1555 statements shall be filed by October 31 of each year, with information current as of September 30 of that year. Even though no changes have occurred since the last filing, a complete statement is required. The Under Secretary of the Navy shall notify the Office of the Secretary of Defense Standards of Conduct Counsellor no later than December 31 of each year that all required statements have been filed and reviewed, with all problems appropriately resolved, or he shall explain the details of the outstanding cases. (RCS DD-SECNAV 5370-1.)

(3) *Extension of filing deadline.* When required by reason of duty assignment, infirmity, or other good cause, a superior, with the concurrence of the Standards of Conduct Counsellor or Deputy Counsellor, may grant an extension of the filing deadline, not to exceed 30 days. A superior, with the concurrence of the Standards of Conduct Counsellor or Deputy Counsellor and the Under Secretary of the Navy, may grant an extension of the filing deadline in excess of 30 days. Any annual statement filed after October 31 shall include an appropriate notation as to whether any extension of the filing deadline has been granted hereunder.

(4) Omission by a commanding officer or head of an activity to furnish a written reminder, as prescribed in

§ 721.9(j), shall not relieve an officer or employee from an applicable filing requirement.

(c) *Place of Submission.* (1) All Department of the Navy civilian Presidential appointees shall submit their statements to the DoD General Counsel.

(2) Commanders of unified commands shall submit their statements directly to the OSD Standards of Conduct Counsellor. Other personnel of the unified commands shall submit their statements through their appropriate supervisor to the Deputy Standards of Conduct Counsellor of the unified command.

(3) Commanders who have a dual responsibility as commanders of both joint and naval commands shall submit their statements through naval channels.

(4) Personnel not serving in a DoD component shall submit their statements to the Under Secretary of the Navy.

(5) Other naval personnel shall submit their statements to their appropriate supervisor for review and forwarding in accordance with § 721.9(f).

(6) Naval personnel who report to more than one reporting senior shall meet the filing requirements of each position independent of the other.

(d) *Content.* (1) All information reported shall be current as of September 30 of the filing year.

(2) Interests of others. The interest of a spouse, minor child, or any member of one's household is to be reported in the same manner as the interest of the individual.

(3) Information not known by naval personnel. Naval personnel shall request submission on their behalf of required information known only to other persons. A request that the information submitted be kept confidential will be honored even if it includes not disclosing the information to the person who requests the submission.

(4) Information not required to be submitted. Naval personnel are not required to submit any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business for profit. For the purpose of this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are to be included in a person's statement. Additionally, naval personnel are not required to report ownership of personal savings or checking accounts in financial institutions, or life or property insurance policies, even though they provide for dividends or cash value.

(e) *Confidentiality of statements of DoD personnel.* Naval authorities shall hold each statement in confidence. Information from a statement may be disclosed, as a routine use, to federal officials who, as part of their official duties, require access to the information and who are listed in the applicable system of records notice required under the Privacy Act, 5 U.S.C. 552a (Subparts F and G of Part 701 of this chapter), and to such other persons to whom disclosure is required under the Privacy Act, the Freedom of Information Act, 5 U.S.C. 552 (Subparts A-D of Part 701 of this chapter), or other provision of law. Persons designated to review the statements are responsible for maintaining the statements in confidence.

(f) *Review and disposition*—(1) *Initial filing.* All initial statements shall be reviewed for apparent conflicts of interests by the appropriate Deputy Standards of Conduct Counsellor and the appropriate supervisor prior to appointment (in the case of special Government employees), nomination (in the case of designees to positions requiring the approval of the Secretary of the Navy), or the commencement of service or the assumption of duties (in all other cases).

(2) *Annual filing.* Upon receipt of annual statements, the appropriate supervisor shall evaluate the statement, in accordance with the standards provided in this part, to determine whether a conflict or apparent conflict of interest is disclosed. The appropriate supervisor shall note the results of that evaluation on the statement, and shall forward the statement to the cognizant Deputy Standards of Conduct

Counsellor under § 721.8(f) for legal review.

(3) *Disposition.* (i) If the appropriate supervisor and the Deputy Standards of Conduct Counsellor agree that the statement discloses no conflict of interests or apparent conflict of interests, both shall record their determination on the statement, and the statement shall be filed in the office of the appropriate supervisor. In the case of a flag or general officer, however, the appropriate supervisor shall, before filing the statement, forward a copy to the Chief of Naval Personnel (Pers-OF) or the Commandant of the Marine Corps (CS), as appropriate, to be retained for use in connection with a possible nomination for appointment or reassigment to a 3- or 4-star billet.

(ii) When either the appropriate supervisor or the Deputy Standards of Conduct Counsellor believes that a statement discloses a conflict or apparent conflict of interests, the officer or employee concerned shall be afforded an opportunity to terminate the conflict or to explain the conflict or apparent conflict in writing. If, after review of the written explanation, both the appropriate supervisor and the Deputy Standards of Conduct Counsellor are satisfied that there is no conflict or apparent conflict, they shall record their determination on the statement and explanation, and the record shall be filed as provided above. Otherwise, the appropriate supervisor and Deputy Standards of Conduct Counsellor shall append their views on the record and, retaining a copy in the office of the appropriate supervisor, forward the original record to the commanding officer or head of the activity for resolution. If the commanding officer or activity head is unable to resolve the controversy, he shall append his comments and recommendations to the record and forward it to:

(A) The Chief of Naval Personnel, in the case of a Navy officer;

(B) The Commandant of the Marine Corps, in the case of a Marine Corps officer; or

(C) The Director of Civilian Personnel, in the case of a civilian employee.

The departmental official thus receiving the record shall refer it to a cognizant Deputy Standards of Conduct Counsellor for legal review and advice. Cases which cannot be resolved by the Chief of Naval Personnel, the Commandant of the Marine Corps, or the Director of Civilian Personnel, as appropriate, shall be forwarded to the Under Secretary of the Navy, via the cognizant department Standards of Conduct Counselor, for final resolution. Cases referred to the Commandant of the Marine Corps, Chief of Naval Personnel, or Director of Civilian Personnel for review shall, when finally resolved, be filed in the Bureau of Naval Personnel, Marine Corps Headquarters, or the Office of Civilian Personnel, as appropriate, with information to the originating activity concerning the ultimate disposition of the case.

(iii) Initial review and local efforts to resolve conflicts or apparent conflicts disclosed in annual statements shall be accomplished by November 30, if possible, and by December 31 in any event unless the Under Secretary of the Navy has granted extension under § 721.9(b)(3). Review and resolution of initial statements submitted prior to appointment or nomination should be accomplished immediately. Initial review and local resolution efforts concerning other initial statements should be accomplished within 30 days after filing.

(g) *Special requirements concerning executive-level and 3- and 4-star flag and general nominees.* (1) As part of the Secretarial approval process for a nominee to any of the positions described in § 721.9(a)(1), of this part, the documents submitting the nominee for approval must contain the following certification by the selecting official, on Civil Service Commission Form 917, executive selection form, in item 30:

I certify that (nominee's name), whom I am nominating for the executive level position of (title, grade or PL designation, and organizational location of position) has executed a confidential statement of affiliations and financial interests, DD Form 1555, that I have evaluated it and had it reviewed by a Deputy Standards of Conduct Counsellor, and that I have found the requirements of DoD Directive 5500.7 of Janu-

ary 15, 1977 and SECNAV Instruction 5370.2G to be satisfied.

(2) As part of the process for approving nominees for appointment to 3- and 4-star flag or general officer positions, the Secretary of the Navy must ensure that the nominee has a current DD Form 1555 on file and that the form has been reviewed in relation to the position for which he is being considered. Further, the Secretary of the Navy is required to cause a review of all relevant systems of records maintained by the Department of the Navy, including investigative files, to determine if there is any evidence of the nominee having violated the standards of conduct. Each nomination forwarded to the Secretary of Defense must be accompanied by a certification of the Secretary of the Navy that the required review has been conducted and that the review has or has not disclosed a violation of the standards of conduct.

(h) *Personnel detailed to other DoD components and Government agencies.* Agreements with other DoD components and Government agencies involving detailing of naval personnel shall contain a requirement that the other DoD component or Government agency shall, within 60 days of the filing time specified in paragraphs (b)(1), (b)(2), and (b)(3) of § 721.9, forward to the appropriate Navy Standards of Conduct Counsellor a copy of the detailed individual's statement, if required, and notice concerning the disposition of any conflict or apparent conflict of interests indicated.

(i) *Effect of statements on other requirements.* The statements required of naval personnel are in addition to, and not in substitution for, any similar requirement imposed by law, order, or regulations. Submission of statements does not permit naval personnel to participate in matters in which their participation is prohibited by law, order, or regulation.

(j) *Review of positions.* Each commanding officer or other head of an activity shall include in the description of each position indicated in § 721.9 a statement that the incumbent of the position must file a statement of affiliations and financial interests, as required by this part. All positions shall be reviewed at least annually, prior to September 30, to determine those which require statements. Any individual may request a review of the decision requiring him to file a statement through the established complaint procedures of the Department of the Navy. Additionally, each incumbent in such a billet or position shall be reminded in writing, by September 30, of the requirement to file a statement, and shall be furnished a copy of the required form. Check-off lists shall be utilized to ensure that all statements have been returned by October 31, or by later specified dates where extensions of time have been granted.

(k) *Exclusion of positions.* A commanding officer or other head of an activity may determine that the submission of statements is not necessary for certain positions described in § 721.9(a)(4) because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbents' work. The Under Secretary of the Navy shall make this determination as to any personnel described in paragraphs (a)(1), (a)(2), and (a)(3) of § 721.9.

§ 721.10 Information to personnel.

The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that all military personnel—regardless of the program in which they are participating or their duty status—receive, as part of their initial or accession training or upon the assumption of duties following initial appointment or enlistment, an oral briefing regarding the provisions of this part. The Chief of Naval Operations and the Commandant of the Marine Corps shall also ensure that all military personnel, except enlisted personnel not required to file statements of affiliations and financial interests (DD Form 1555), receive a copy of this part as part of the oral briefing on this part. The Director of Civilian Personnel shall ensure that all civilian personnel receive a copy of and an oral briefing regarding the provisions of this part preceding employment or upon assumption of duties. All person-

nel shall attest in writing to their attendance at the required briefing, that they have read this part, and that they understand the requirements imposed hereby.

§ 721.11 [Reserved]

§ 721.12 Reporting of post-retirement employment.

(a) Each retired Regular officer of the Navy and Marine Corps shall keep the Department of the Navy advised of his post-retirement employment activities. All retired Regular officers whose names have been on the retired list for three years or less shall file a statement of employment (DD Form 1357). All retired Regular officers whose names have been on the retired list for over three years are encouraged to use DD Form 1357 to report their post-retirement employment activities. In any event, officers whose names have been on the retired list for more than three years shall, at a minimum, keep the Department of the Navy advised as to whether they are employed by any agency, instrumentality, or department of the United States and, if so, the position title and employing agency. In the event that reporting the information required would tend to show that the officer concerned was violating or had violated 18 U.S.C. 281 or any other criminal provision, the filing requirement will be satisfied by a written refusal, signed by the officer concerned, to provide the required information on the basis that the information may tend to incriminate the officer. Each Regular officer retiring hereafter shall file this statement within 30 days after retirement. Whenever the information reported changes, each such officer shall make an appropriate report within 30 days of that change. The Comptroller of the Navy (for Regular Navy officers) and the Commandant of the Marine Corps (for Regular Marine Corps officers) shall advise each officer required to file of the continuing need to report their post-retirement employment activities as set forth above.

(b) Reports of post-retirement employment shall be submitted—

(1) In the case of a retired Regular Navy officer—to the Commanding Officer, Navy Finance Center (Retired Pay Division), Cleveland, OH 44199; or

(2) In the case of a retired Regular Marine Corps officer—to the Commanding Officer, Marine Corps Finance Center, Kansas City, MO 64197.

(c) The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall provide each Regular officer retiring hereafter, as part of the retirement check-out procedures, with clear instructions concerning the requirement under this part to report post-retirement employment. These instructions should be combined, where applicable, with the instructions prescribed in SECNAVINST 5314.5 (series) (Part 722 of this chapter) concerning the possible additional requirement to file reports of DoD and defense related employment (DD Form 1787).

(d) The Comptroller of the Navy or the Commandant of the Marine Corps, as appropriate, is responsible for the review of all reports of post-retirement employment filed by retired Regular Navy and Marine Corps officers, to ensure compliance with applicable laws and regulations.

(e) If an apparent violation of law or regulation is noted upon review of a report of post-retirement employment, a copy of the report shall be transmitted to the Commander, Navy Accounting and Finance Center, or Commandant of the Marine Corps, as appropriate. If that official determines that a violation may have been committed, a copy of the statement shall be forwarded to the Judge Advocate General (Code 13) for such additional review, inquiry, advice, or further action as may be warranted.

§ 721.13 Availability of forms.

Supplies of DD Form 1555 will be available in the Forms and Publications Segment of the Navy Supply System beginning in September 1977 under stock number 0102-LF-001-5550. Supplies of Civil Service Form 917 are available in the Forms and Publications Segment of the Navy Supply System under stock number 0101-LF417-0002. Supplies of DD

Form 1357 are available from the Commanding Officer, Navy Finance Center, Cleveland, Ohio, and are not stocked in the Navy Supply System.

PART 722—REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Sec.

722.1 Purpose.
722.2 Scope and effect.
722.3 Persons required to file form DD 1787.
722.4 Filing and review procedures.
722.5—722.6 [Reserved]
722.7 Availability of forms.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 166 and 5031; 50 U.S.C. 1436.

SOURCE: 41 FR 34745, Aug. 17, 1976, unless otherwise noted.

§ 722.1 Purpose.

This Part 722 implements 50 U.S.C. 1436 and Part 166 of this title, which establish requirements and procedures for annual filing and review of reports of Department of Defense (DoD) and defense related employment (form DD 1787) submitted by:

(a) Certain categories of civilian officers and employees of the Department of Defense who were formerly employed by defense prime contractors, and

(b) Certain categories of former military officers and former DoD civilian officers and employees who were subsequently employed by defense prime contractors.

§ 722.2 Scope and effect.

The provisions of this part apply to all Navy and Marine Corps activities, and to the Department of the Navy personnel and former or retired personnel indicated in § 722.3, including personnel of Navy or Marine Corps nonappropriated fund activities. An idividual who is required to file a report of DoD and defense related employment (form DD 1787) and fails to do so for any reason is subject under 50 U.S.C. 1436 to a penalty of six months imprisonment, a fine of $1,000, or both.

§ 722.3 Persons required to file form DD 1787.

(a) *Criteria.* The Department of the Navy personnel and former or retired personnel indicated below shall file form DD 1787 with the Secretary of the Navy, in the manner prescribed in § 722.4, not later than January 15 following the close of any fiscal year in which all the specified conditions occur.

(1) *Civilian personnel formerly employed by defense prime contractors.* A civilian officer or employee of the Department of the Navy, including a consultant or part-time employee, shall file form DD 1787, if:

(i) He was employed during any part of the fiscal year by the Department of the Navy or another DoD component at a salary rate at least equal to the minimum rate for grade GS–13;

(ii) At any time during the three-year period preceding the beginning of the fiscal year, he was employed by or performed services for a defense prime contractor, as defined in paragraph (b)(2) of this § 722.3, at a salary rate of at least $15,000 per year; and

(iii) Such defense prime contractor received $10 million or more of negotiated defense contracts during the fiscal year.

(2) *Former civilian personnel subsequently employed by defense prime contractors.* A former civilian officer or employee of the Department of the Navy, including a consultant or part-time employee, shall file form DD 1787, if:

(i) During any part of the fiscal year, he was employed by or performed services for a defense prime contractor, as defined in paragraph (b)(2) of this § 722.3, at a salary rate of at least $15,000 per year;

(ii) Such defense prime contractor received at least $10 million of negotiated defense contracts during the fiscal year;

(iii) The employee's last employment with the Department of the Navy was terminated not more than three years prior to the beginning of the fiscal year; and

(iv) At any time during the three-year period preceding the termination of his last employment by the Depart-

ment of the Navy, he was paid at a rate at least equal to the minimum rate provided at the time for grade GS–13.

(3) *Former military officers subsequently employed by defense prime contractors.* A former officer, including a retired officer, of the Navy, Marine Corps, Naval Reserve, or Marine Corps Reserve, who served on extended active duty for at least 10 years and was serving in the grade of lieutenant commander, major, or above, at the time of retirement or release from or termination of extended active duty, shall file a form DD 1787, if:

(i) During any part of the fiscal year, he was employed by or performed, services for a defense prime contractor, as defined in paragraph (b)(2) of this § 722.3, at a salary rate of at least $15,000 per year;

(ii) Such defense prime contractor received at least $10 million of negotiated defense contracts during the fiscal year; and

(iii) The former or retired officer's extended active duty terminated not more than three years prior to the beginning of the fiscal year. (A retired military officer is subject to the reporting requirement, if otherwise applicable, even if his military retirement pay is waived). A Reserve officer, not on active duty who is not a "retired officer" is a "former officer" for the purpose of form DD 1787 even though he currently holds a commission in a Reserve component.

(b) *Definitions*—(1) *Employed or employment* is used in a broad sense in this part to include services performed, as a consultant or otherwise, either for a defense prime contractor or for a component of the Department of the Navy or DoD. This definition includes, among other services which might have been performed for a defense prime contractor, representing a contractor at a hearing, trial, appeal, or other action in which the United States was a party and which involved services and materials provided or to be provided to DoD by such contractor, and representing a contractor in any transaction with DoD involving services or materials provided or to be provided by such contractor to DoD.

(2) *Defense prime contractor* is used in this part to mean any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with DoD, or any component thereof, to furnish services or materials, including construction, to DoD or a component, and which is awarded $10 million or more of negotiated defense contracts (as distinguished from contracts awarded by formal advertising) during a given fiscal year. The definition thus excludes subcontractors, and excludes prime contractors that receive less than $10 million of negotiated defense contract awards in a fiscal year. Also, a subsidiary of a large corporation may be a separate entity and contract directly with DoD in its own name, in which case the "defense prime contractor" would be the subsidiary corporation, not the parent corporation. Therefore, only the dollar amount of negotiated contracts awarded by DoD components to a subsidiary contracting in its own name during a fiscal year would be considered in determining whether the subsidiary's employees or former employees may be required to file form DD 1787. A list of the "defense prime contractors" meeting the criteria of this definition for the preceding fiscal year is published each December (each September for fiscal years prior to FY 1976) in the FEDERAL REGISTER, appearing as an amendment of 32 CFR 166.11. Such a list will also be disseminated annually to all naval activities by a JAG Notice.

(3) *Fiscal year* means the period beginning on July 1, 1975, and ending on September 30, 1976, and, after the latter date, means a year beginning on October 1 and ending on September 30 of the following year. It is designated by the calendar year in which it ends—for example, FY 1977, begins on October 1, 1976 and ends on September 30, 1977.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 34745, Aug. 17, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

§ 722.4 Filing and review procedures.

(a) Individuals required under § 722.3 to file reports of DoD and defense related employment (form DD

1787) shall submit such reports, in triplicate, in the format prescribed in form DD 1787 and the completion instruction which accompany the form, not later than January 15 following the close of the fiscal year to which the report pertains. The reports shall be submitted to the following officials:

(1) Active civilian personnel formerly employed by defense prime contractors: the Director of Civilian Manpower Management (Administrative Office (01B)), Department of the Navy, Washington, D.C. 20390;

(2) Former civilian personnel subsequently employed by defense prime contractors: The Director of Civilian Manpower Management (Administrative Office (01B), Department of the Navy, Washington, D.C. 20390;

(3) Former or retired Navy or Naval Reserve officers subsequently employed by defense prime contractors: The Chief of Naval Personnel (Pers-14), Department of the Navy, Washington, D.C. 20370;

(4) Former or retired Marine Corps or Marine Corps Reserve officers subsequently employed by defense prime contractors: The Commandant of the Marine Corps (Code MSPA-3), Department of the Navy, Washington, D.C. 20380.

(b) The Director of Civilian Manpower Management, Chief of Naval Personnel, and Commandant of the Marine Corps shall receive for the Secretary of the Navy, as provided in paragraph (a) of this § 722.4, all reports of DoD and defense related employment (form DD 1787) submitted by personnel and former personnel of the Department of the navy, and shall review each report in the manner prescribed in paragraph (d) of this § 722.4. Not later than February 15 each year, they shall forward to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) three copies of each form received by them, together with a listing of the names of individuals submitting the forms, segregated by the names of the defense prime contractors for which the individuals were employed or performed services. (RCS DD-M&RA(A) 1051 (5370).)

(c) Not later than February 28 each year, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) shall forward to the Assistant Secretary of Defense (Manpower and Reserve Affairs) three copies of each form received pursuant to paragraph (b) of this § 722.4, together with a composite listing, in triplicate, of the names of individuals submitting the forms, segregated by the names of the defense prime contractors concerned. (RCS DD-M&RA(A) 1051 (5370).) (Copies of the completed forms and listings are later provided by the Assistant Secretary of Defense (Manpower and Reserve Affairs) to the Congress and are filed for public inspection in the Office of the Secretary of Defense.)

(d) In conducting the review prescribed in paragraph (b) of this § 722.4, the Director of Civilian Manpower Management, Chief of Naval Personnel and Commandant of the Marine Corps, as appropriate, shall determine whether:

(1) Each form submitted is required under this part and 50 U.S.C. 1436;

(2) All required information has been furnished; and

(3) The information submitted indicates an apparent violation of a conflict-of-interests law or regulation cited or provided in Part 721 of this chapter. (For example, the fact that a former officer became employed by a defense prime contractor after terminating Government duties involving that contractor might indicate a possible violation of 18 U.S.C. 207 or 208(A), or the fact that a retired Regular officer represents a contractor in transactions or negotiations with DoD components might indicate a possible violation of 18 U.S.C. 281 or temporarily disentitle him from receiving military retirement pay under 31 U.S.C. 801(c).)

(e) If, upon review of a form, it is determined that the form was not required to be submitted or that all required information has not been furnished, appropriate corrective action shall be taken. If it is determined that a conflict-of-interests violation may have been committed, the form will be processed as provided in paragraph (b) of this § 722.4, but a copy of the form shall be forwarded, for such additional review, inquiry, advice, or further

action as may be warranted, to the Chief of Naval Material if involving a possible violation in connection with the procurement, acquistions, or disposal of property within the purview of SECNAVINST 4385.1B; or to the Judge Advocate General in any other case.

§§ 722.5—722.6 [Reserved]

§ 722.7 Availability of forms.

Supplies of form DD 1787 are available in the Forms and Publications Segment of the Navy Supply System under Stock Number 0102-Lf-025-5090.

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

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723.6 Action by the Board.
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723.8 Staff action.
723.9 Reconsideration.
723.10 Settlement of claims.
723.11 Miscellaneous.

AUTHORITY: Secs. 1552, 5031, 70A Stat. 116, 278, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 1552, 5031.

§ 723.1 General provisions.

(a) *Purpose.* This part establishes procedures for making application, and the consideration of applications, for the correction of Navy and Marine Corps records (referred to in this part as naval records) by the Secretary of the Navy acting through the Board for Correction of Naval Records (hereinafter referred to in this part as the Board).

(b) *Authority.* Section 131 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190g) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records, shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended, and as re-enacted and codified in 10 U.S.C. 1552, provides:

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) To the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) If there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) As otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappoint-

ed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961]

§ 723.2 Establishment, function, and jurisdiction of the Board.

(a) *Establishment and composition.* Pursuant to the foregoing statutory authority, the Board for Correction of Naval Records is established in the Office of the Secretary of the Navy. The Board consists of civilians of the executive part of the Department of the Navy in such number, not less than three, as may be appointed by the Secretary of the Navy. Three members present shall constitute a quorum of the Board. The Secretary of the Navy will designate one member as Chairman. In the absence or incapacity of the Chairman, an Acting Chairman chosen by the Board shall act as Chairman for all purposes.

(b) *Function.* The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice, and, when appropriate, to make recommendations to the Secretary.

(c) *Jurisdiction.* The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961; 42 FR 18277, Apr. 6, 1977]

§ 723.3 Application for correction.

(a) *General Requirements.* (1) The application for correction should be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or exact facsimile thereof, and should be addressed to: Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370. Forms and explanatory matter may be obtained upon request addressed to the Board.

(2) Except as provided in paragraph (a)(3) of this section, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim. (18 U.S.C. 287, 1001.)

(3) When the record in question is that of a person who is incapable of making application himself, or whose whereabouts is unknown, or when such person is deceased, for the purpose of bringing the matter before the Board the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted as may be required by the Board.

(b) *Time Limit for Filing Application.* A claimant, his heir, or legal representative, must file the application for correction of a record within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, his heir, or legal representative files an application more than 3 years after he discovers the error or injustice, he must include in his application his reasons why the Board should find it is in the interest of justice to excuse his failure to file his application within the time prescribed above.

(c) *Exhaustion of other remedies.* No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

(d) *Other proceedings not stayed.* The application to the Board for correction of a record shall not operate as a stay of any proceedings being taken with respect to the person involved.

(e) *Consideration of Application.* (1) Each application and the available military or naval records pertinent to the corrective action requested will be

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reviewed to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him, or for the reason that the applicant did not file his application within 3 years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years.

(2) The Board may deny any application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a Board for the correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate the existence of probable material error or injustice is without prejudice to further consideration in the event new and relevant evidence is submitted. The applicant will be informed of his privilege to submit newly discovered relevant evidence for consideration.

(3) All requests for further consideration may be initially screened by the staff of the Board to determine whether and evidence or other matter (including, but not limited to any factual allegations or any arguments why the relief should be granted) has beeen submitted by the applicant that was not in the reocord at the time of any prior Board consideration. If such evidence or other matter has been submitted, the request shall be forwarded to the Board for a determination in accordance with paragraph (e)(2) of this section. If no such evidence or other matter has been submitted, the applicant will be informed that his request was not considered by the Board because it did not contain any evidence or other matter that was not in the record at the time of any previous Board consideration.

(4) When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board's determination shall be made in writing and include a brief statement of the grounds for denial.

(5) The brief statement of the grounds for denial shall include the reasons for the determination that relief should not be granted, including the applicant's claim of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which the denial is based, including, if applicable, factors required by regulation to be considered for determination of the character of and reasons for a discharge. Attached to the statement shall be any advisory staff opinion considered by the Board which is not fully set out in the statement, together with any minority opinion.

(6) The brief statement of the grounds for denial, together with all attachments, shall be furnished promptly to applicant and counsel, who shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. Classified or privileged material contained in or attached to the statement of the grounds for denial may be deleted only if a written statement of the basis for the deletion is provided the applicant and counsel.

(7) Documents sent to each applicant in accordance with paragraph (e)(6) of this section, and § 723.8(d), and all other non-boiler-plate statements of findings and conclusions made on final determination of an application by the Board, the Secretary of his designee together with the record of votes of Board members, and required appendices, will be promptly indexed and made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room, located on the Concourse of The Pentagon Building, Washington, D.C. There will be deleted from such documents informa-

tion which would be a clearly unwarranted invasion of personal privacy. Privileged or classified material may be deleted only if a written statement of the basis for deletion is provided applicant and counsel.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961; 34 FR 19195, Dec. 4, 1969; 42 FR 18277, Apr. 6, 1977; 43 FR 2170, Jan. 16, 1978]

§ 723.4 General; notice; counsel; witnesses; access to records.

(a) *General.* In each case in which the Board determines a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

(b) *Notice.* (1) In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least thirty days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

(2) Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing, will be considered in accordance with § 723.5(b)(2).

(c) *Counsel, definition of.* As used in this part, the term "counsel" will be construed to include members in good standing of the Federal Bar or the Bar of any State, accredited representatives of veterans organizations recognized by the Administrator of Veterans' Affairs under Title 38, U.S. Code, Sec. 3402, and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

(d) *Witnesses.* The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

(e) *Access to Records.* (1) The applicant shall have access to such official records as are deemed necessary to an adequate presentation of his case. It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he desires to present in support of his case.

(2) Classified or privileged matter shall not be disclosed or made available without express finding of the Chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure shall not be contrary to existing law and departmental regulations concerning privileged and classified material. When appropriate the applicant may be supplied only with a summary or extract of classified matter.

(3) This regulation does not authorize the furnishing of copies of official records by the Board. Requests for copies of official records should be submitted in accordance with regulations governing the release of information.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961; 34 FR 19195, Dec. 4, 1969]

§ 723.5 Hearing.

(a) *Convening of Board.* The Board will be convened at the call of the Chairman and will recess or adjourn at his order.

(b) *Conduct of hearing.* (1) The hearing shall be conducted by the Chairman, and shall be subject to his rulings so as to insure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(2) If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material

before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(3) If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with the provisions of paragraph (b)(2) of this section, or will make such other disposition of the case as is indicated under the circumstances.

(4) All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

(c) *Continuance.* The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

[17 FR 10243, Nov. 11, 1952]

§ 723.6 Action by the Board.

(a) *Deliberations, findings, and conclusions, and recommendations.* (1) Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, the Board determines to recommend that the record be corrected without a hearing, they will make written findings, conclusions, and recommendations. If denial of relief is recommended following a hearing, such written findings and conclusions will include a statement of the grounds for denial as described in § 723.3(e)(5). The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary of the Navy as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication.

(b) *Minority report.* In case of a disagreement between members of the Board a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor.

(c) *Record of proceedings.* When the Board has completed its determination, a record thereof shall be prepared. Such record shall indicate whether or not a quorum was present and the name and vote of each member present. The record shall include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments, advisory opinions, if any, minority reports, if any, the findings, conclusions, and recommendations of the Board where appropriate, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the Chairman or his designee as being true and complete.

(d) *Withdrawal.* The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Navy.

(e) *Delegation of authority to correct certain military or naval records.* (1) The Board for Correction of Naval Records is authorized to take final action on behalf of the Secretary of the Navy, under 10 U.S.C. 1552, in approving the correction of military or naval records, provided

(i) The relief granted is completely in accord with that requested by the applicant, and

(ii) Such action has (A) been recommended by the proper naval authority; (B) is agreed to by the Board; and (C) falls into one of the following categories:

(*1*) Restoration of leave unduly charged to applicants.

(*2*) Promotion retroactively of applicants who would have been promoted during regular promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(*3*) Adjustment of enlisted grades and promotion of applicants to grades held immediately prior to reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(*4*) Awards of basic allowance for subsistence, family separation allowance, dislocation allowance and travel allowance to applicants entitled thereto.

(*5*) Authorizing participation, declination, or modification of an election under the Retired Serviceman's Family Protection Plan and/or the Survivor Benefit Plan where failure to elect to participate, decline to participate, or to make an appropriate election was due to inadvertence, misunderstanding or through no fault of the service member.

(*6*) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(*7*) Award of variable reenlistment bonus, proficiency pay, enlistment and/or reenlistment bonus to applicants clearly entitled thereto.

(*8*) Change of home of record where upon entry on duty applicants erroneously reported other than actual home.

(*9*) Award of reserve participation credit in computation of years of satisfactory servic where such service was improperly or erroneously credited.

(2) The Executive Secretary of the Board, after assuring compliance with the above conditions, will announce the final action on applications processed under this paragraph.

[42 FR 18277, Apr. 6, 1977]

§ 723.7 Action by the Secretary.

The record of proceedings of the Board, except in cases finalized by the Board under the authority delegated in paragraph (e) of § 723.6 or those denied by the Board without a hearing, will be forwarded to the Secretary of the Navy who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. Those cases returned for further consideration shall be accompanied by a brief statement setting out the reasons for such action and any specific instructions. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he expressly adopts in whole or in part the findings, conclusions and recommendation of the Board, shall include a brief statement of the grounds for denial. See paragraph (e)(5) of § 723.3.

[42 FR 18278, Apr. 6, 1977]

§ 723.8 Staff action.

(a) Upon final action by the Secretary of the Navy, the record of proceedings shall be returned to the Board for disposition. The Board shall transmit the decision previously submitted and approved by the Secretary of the Navy to the proper naval authority for appropriate action.

(b) The addresses of such decisions shall report compliance therewith to the Chairman of the Board.

(c) The Board shall transmit a copy of the record of proceedings to theproper naval authority for filing in the service record of lthe subject of the application except where the effect of such action would be to nullify the relief granted. In such cases no reference in the service record or files of the applicant and all copies of the record of proceedings and any related papers shall be forwarded to the Board and by it retained in a confidential file maintained for the purpose. Access to such file shall be had only upon written order of the Secretary of the Navy.

(d) Upon receipt of the record of proceedings after final action by the Secretary of the Navy, or by the Board acting under the authority con-

tained in paragraph (e) of § 723.6, the Board shall communicate the decision to the applicant and counsel.

(1) If the recommendation of the Board was to deny relief or if the final decision of the Secretary or the Board was to deny relief, the following material will be made available to the applicant and counsel:

(i) A statement of the findings conclusions, and recommendations made by the Board;

(ii) Any advisory staff opinions considered by the Board or the reviewing authority;

(iii) Any minority reports; and

(iv) Any material prepared by the Secretary of the Navy as required in § 723.7. Moreover, applicant and counsel shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. To the extent that any of the above material consists of classified or otherwise privileged matters, delections may be made only if a written statement of the basis therefor is provided the applicant and counsel.

(2) If the final decision was other than to deny relief, the applicant and counsel are entitled, upon request, to receive a copy of the Board's findings, conclusions and recommendations.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12122, Dec. 19, 1961; 42 FR 18278, Apr. 6, 1977]

§ 723.9 Reconsideration.

After final adjudication further consideration will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Navy.

[34 FR 19196, Dec. 4, 1969]

§ 723.10 Settlement of claims.

(a) *Authority.* (1) The Department of the Navy is authorized to pay claims in accordance with 10 U.S. Code 1552, which is quoted in § 723.1(b).

(2) The Department of the Navy is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

(b) *Application for settlement.* (1) Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law, or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(2) In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse, heir or beneficiaries, in the order prescribed by the law applicable to that kind of payment; or if there is no such law covering order of payment, in the order set forth in 10 U.S. Code 2771; or as otherwise prescribed by the law applicable to that kind of payment.

(3) Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

(c) *Settlement.* (1) Settlement of claims shall be upon the basis of the decision and recommendations of the Board, as approved by the Secretary of the Navy. Computation of the amounts due shall be made by the appropriate disbursing activity. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government arising from military service.

(2) Prior to or at the time of payment, the person, or persons to whom payments are to be made shall be advised by the disbursing activity as to

the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

(d) *Report of settlement.* In every case where payment is made, the amount of such payment and the names of the payee or payees, shall be reported to the Chairman of the Board.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12122, Dec. 19, 1961; 34 FR 19196, Dec. 4, 1969; 42 FR 18278, Apr. 6, 1977]

§ 723.11 Miscellaneous.

(a) *Staff assistance.* The facilities of all bureaus, offices, and boards of the Navy Department shall be made available to the Board to assist it in the performance of its function.

(b) *Expenses.* No expenses of any nature whatsoever voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf, will be paid by the Government.

(c) *Changes in procedures.* The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Navy and of the Secretary of Defense.

(d) *Publication in the "Federal Register."* These regulations and any amendments thereto will be published in the FEDERAL REGISTER.

(e) *Indexing of decisions.* (1) Documents sent to each applicant and counsel in accordance with § 723.3(e)(6) and § 723.8(d), together with the record of the votes of board members and all other statements of findings, conclusions and recommendations made on final determination of an application by the Board or the Secretary of the Navy will be indexed and promptly made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room located on the Concourse of The Pentagon Building, Washington, D.C.

(2) All documents made available for public inspection and copying shall be indexed in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the Board and/or Secretary of the Navy have granted or denied relief. The index shall be published quarterly and shall be available for public inspection and distribution by sale at the reading room located on the Concourse of The Pentagon Building, Washington, D.C. Inquiries concerning the index or the reading room may be addressed to the Armed Forces Discharge Review/Correction Boards Reading Room, The Pentagon Concourse, Washington, D.C. 20301.

(3) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers and military service numbers must be deleted. Deletions of other information which may result in a clearly unwarranted invasion of personal privacy or which is privileged or classified may be made only if a written statement of the basis for such deletion is made available for public inspection.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12122, Dec. 19, 1961; 42 FR 18278, Apr. 6, 1977; 43 FR 2170, Jan. 16, 1978]

PART 724—NAVAL DISCHARGE REVIEW BOARD

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724.1103 Functions of the Chief, Bureau of Medicine and Surgery.
724.1104 Functions of the Commandant of the Marine Corps and Chief of Naval Reserve (refer to § 724.322).
724.1105 Functions of the Commandants of Naval Districts and Directors of Marine Corps Districts (refer to § 724.322).

APPENDIX A—METHODS BY WHICH INDIVIDUALS MAY BE INVOLUNTARILY SEPARATED FROM THE NAVAL SERVICE (OTHER THAN BY REASON OF BEING PHYSICALLY UNFIT)
APPENDIX B—POLICY STATEMENTS BY THE SECRETARY OF DEFENSE—ADDRESSING CERTAIN CATEGORIES OF DISCHARGES
APPENDIX C—OATH OF AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS
APPENDIX D—PRINCIPAL FORMS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD
APPENDIX E—VETERANS' BENEFITS.

AUTHORITY: 10 U.S.C. 1553, unless otherwise noted.

SOURCE: 44 FR 66802, Nov. 21, 1979, unless otherwise noted.

Subpart A—Definitions

§ 724.101 Naval service.

The naval service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

§ 724.102 Naval Discharge Review Board.

An administrative board established by the Secretary of the Navy pursuant to Title 10, United States Code, section 1553, for the review of discharges of former members of the naval service.

§ 724.103 Naval Discharge Review Board Panel.

An element of the Naval Discharge Review Board, consisting of five members, authorized to review discharges. In plenary review session, a Naval Discharge Review Board Panel acts with the authority delegated by the Secretary of the Navy to the Naval Discharge Review Board.

§ 724.104 Naval Discharge Review Board Traveling Panel.

A Naval Discharge Review Board Panel that travels for the purpose of conducting personal appearance discharge review hearings in locations outside the Washington, D.C. area.

§ 724.105 President, Naval Discharge Review Board.

A senior officer of the naval service designated by the Secretary of the Navy who is responsible for the direct supervision of the discharge review function within the naval service. (*See* Subpart J of this part.)

§ 724.106 Presiding Officer, Naval Discharge Review Board Panel.

The senior member of a Naval Discharge Review Board Panel shall be the Presiding Officer. He shall convene, recess, and adjourn the Naval Discharge Review Board Panels as appropriate.

§ 724.107 Discharge.

(a) In the context of the review function prescribed by 10 U.S.C. 1553, a discharge or dismissal is a complete separation from the naval service, other than one pursuant to the sentence of a general court-martial.

(b) By reason of usage, the term "discharge" is predominantly applicable to the separation of enlisted personnel for any reason, and the term "dismissal" to the separation of officers as a result of Secretarial or general court-martial action; however, Appendix A to this part sets forth other applicable separations.

(c) In the context of the mission of the Naval Discharge Review Board, the term "discharge" used in this part shall, for purpose of ease of expression, include any complete separation from the naval service other than that pursuant to the sentence of general court-martial.

(d) The term "discharge" also includes the type of discharge and the reason/basis for that discharge, *e.g.* Undesirable/Misconduct (Civil Conviction).

§ 724.108 Administrative discharge.

A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Chief of Naval Personnel, but specifically excluding separation by sentence of a court-martial.

§ 724.109 Characterization of service for administrative discharge.

(a) A determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations are:

(1) *Honorable.* A separation from the naval service with honor. The issuance of an Honorable Discharge is contingent upon proper military behavior and performance of duty.

(2) *Under Honorable Conditions (also termed General Discharge).* A separation from the naval service under honorable conditions is contingent upon military behavior and performance of duty which is not sufficiently meritorious to warrant an Honorable Discharge.

(3) *Under Other Than Honorable Conditions (formerly termed Undesirable Discharge).* A separation from the naval service under conditions other than honorable. It is issued to terminate the service of a member of the naval service for one or more of the reasons/bases listed in the current editions of the Bureau of Naval Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

§ 724.110 Reasons/bases for administrative discharges.

The terms "reason for discharge" and "basis for discharge" have the same meaning. The first is a Navy term and the second is a Marine Corps term. These terms identify why an administrative discharge was issued, *e.g.*, Convenience of the Government, Misconduct. Reasons/bases for discharge are found in the Bureau of Naval Personnel Manual and Marine Corps Separation and Retirement Manual as well as their predecessor publications.

§ 724.111 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad conduct.* A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable.* A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

§ 724.112 Clemency discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonal to the fact that the individual has satisfied the re-

quirements of the President's program, and has fully earned his return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as having been under other than honorable conditions, nor does it serve to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency Discharges are issued by the Chief of Naval Personnel or the Commandant of the Marine Corps when an individual has met the requirements.

§ 724.113 Application.

In the context of this part, a written application to the Naval Discharge Review Board for review of discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin or legal representative. Department of Defense Form 293 is used for application. (Appendix D of this part.)

§ 724.114 Applicant.

A former member of the naval service who has been discharged administratively in accordance with the directives of the naval service or by sentence of a special court-martial under Title 10 U.S.C. 801 *et seq.* (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions:

(a) Whose case is considered by Naval Discharge Review Board at the request of the former member, or, if authorized under § 724. 113, the surviving spouse, next-of-kin or legal representative, or

(b) Whose case is considered on the Naval Discharge Review Board's own motion (*see* § 724.318).

§ 721.115 Next-of-kin.

The person or persons in the highest category of priority as determined by the following list (categories appear in descending order of priority): Surviving legal spouse; children (whether current or prior marriage) age 18 years or older in descending precedence by age; father or mother, unless by court order custody has been vested in another (adoptive parent takes precedence over natural parent); siblings (whole of half) age 18 years or older in descending precedence by age; grandfather or grandmother; any other relative (precedence to be determined in accordance with the civil law of descent of the deceased former member's state of domicile at time of death). (Reference Bureau of Naval Personnel Instruction 1770.2 series).

§ 724.116 Legal representative.

The person(s) representing the interests of the member or former member. Proof of proper interest shall be submitted as may be required by the Naval Discharge Review Board.

§ 724.117 Counsel/representative.

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the Naval Discharge Review Board. It includes but is not limited to: a lawyer who is a member of the bar of a Federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans' affairs; a representative from a state agency concerned with veterans' affairs; and representatives from private organizations or local government agencies.

§ 724.118 Discharge review.

Reappraisal at the level of the Navy Department of discharges from the naval service. The object of the reappraisal is to determine whether the discharge should be changed, and if so, the nature of the change. This reappraisal includes the type and reason/basis for separation, the procedures followed in accomplishing separation, and the characterization of service. This term includes determinations made under the provisions of Title 38, United States Code, section 3103(e).

§ 724.119 Documentary discharge review.

A formal session of the Naval Discharge Review Board convened for the purpose of reviewing, on the basis of documentary data, an applicant's discharge. The documentary data shall include the application together with all information accompanying that application, available service and medical records, and any other information considered relevant by the Naval Discharge Review Board.

§ 724.120 Personal appearance discharge review.

A formal session of the Naval Discharge Review Board convened for the purpose of reviewing an applicant's discharge on the basis of personal appearance, as well as documentary data. The personal appearance may be by the applicant or by a representative of the applicant, or both.

§ 724.121 Findings upon contentions/issues.

A statement of substantiated evidence which provides the basis for conclusions and reasons with respect to contentions/issues.

§ 724.122 Conclusions upon contentions/issues.

Judgments that contentions/issues are either valid or invalid.

§ 724.123 Reasons for findings/conclusions.

A statement which supports the conclusion as to the validity, or invalidity, of a contention/issue, based upon the findings on that contention/issue.

§ 724.124 Findings upon which decision is based.

A statement which identifies the applicant's current discharge, the change(s) the applicant has requested, and a summary of the previous conclusions on contentions/issues which support the decision/recommendation.

§ 724.125 Conclusions upon which decision/recommendation is based.

A statement of whether or not the type and/or reason/basis of the applicant's discharge should be changed and, if changed, the changes to be made.

§ 724.126 Reason upon which decision/recommendation is based.

Statements supporting the conclusions upon which the decision/recommendation is based and when the full relief requested is not granted, the reasons why.

§ 724.127 Decision/recommendation.

A determination as to whether or not a discharge should be changed.

Subpart B—Authority for Departmental Discharge Review

§ 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. 1553, is a component of the Naval Council of Personnel Boards. By Secretary of the Navy Instruction 5430.7 series, Subject: Assignment of Responsibilities to and among the Civilian Executive Assistants to the Secretary of the Navy, the Assistant Secretary of the Navy (Manpower, Reserve Affairs, and Logistics) is authorized and directed to act for the Secretary of the Navy within his assigned area of responsibility and exercises direct supervision over the Naval Council of Personnel Boards. Secretary of the Navy Instruction 5420.135 series, Subject: Naval Council of Personnel Boards, states the organization, mission, duties, and responsibilities of the Naval Council of Personnel Boards to include the Naval Discharge Review Board. By Chief of Naval Operations Notices 5420 of September 9, 1976, and January 24, 1977, the Chief of Naval Operations approved the Naval Council of Personnel Boards as a shore activity with the following mission statement:

To administer and supervise assigned boards and councils.

§ 724.202 Statutory/directive authority.

The Naval Discharge Review Board, in its conduct of discharge reviews, shall be guided by the applicable statutes, regulations, bureau manuals, directives of the Department of the Navy, and other written public expres-

sions of policy by competent authority.

(a) 10 U.S.C. 1553, Review of discharge or dismissal:

(a) The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under jurisdiction of his department upon its own motion or upon the request of the former member, or, if he is dead, his surviving spouse, next-of-kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of the Veterans' Affairs under Chapter 59 of Title 38.

(b) Pub. L. 95-126. See Appendix E of this part.

(c) 32 CFR Part 70. This provides for uniform standards and procedures for review of discharges from the military services of the Department of Defense. The provisions of 32 CFR Part 70 are incorporated in this part.

(d) The Secretary of Defense memoranda dated August 13, 1971 and April 28, 1972. These directed a review for recharacterization of:

(1) Administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use, and (2) punitive discharges and dismissals issued solely for conviction of personal use of drugs and possession for the purpose of such use, for those discharges executed as a result of a case completed or in process on or before July 7, 1971. (See Appendix B).

(e) 32 CFR Part 41. This prescribes policy, standards and procedure which govern the administrative separation of enlisted persons from the armed forces.

Subpart C—Policy Pertaining to Review of Naval Discharges

§ 724.301 Broad objectives of naval discharge review.

Naval discharge review shall have as its broad objectives:

(a) The furtherance of good order and discipline,

(b) The correction of injustice or inequity in the discharge issued,

(c) The correction of administrative or clerical errors.

§ 724.302 Eligibility for naval discharge review.

Any former member of the naval service, eligible for review under 10 U.S.C. 1553, or surviving spouse, next of kin or legal representative, shall upon submission of an application be afforded a review of the member's discharge from the naval service as provided in §§ 724.303 and 724.304. Discharge review may also be initiated on the motion of the Naval Discharge Review Board. (See § 724.318.)

§ 724.303 Authority for review of naval discharges; jurisdictional limitations.

(a) The board shall have no authority to:

(1) Review a discharge or dismissal resulting from a general court-martial;

(2) Revoke any discharge or dismissal;

(3) Reinstate a person in the naval service; or

(4) Recall a former member to active duty.

(b) Review of naval discharge shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years. Pub. L. 95-126, however, provides that any former member administratively discharged under other than honorable conditions, and otherwise eligible to make application for review may do so without regard to the 15-year limitation period in Title 10 United States Code, section 1553 if such application is received prior to

January 1, 1980. (See Appendix E of this part.)

§ 724.304 Jurisdictional determinations.

The determination as to whether the Naval Discharge Review Board has jurisdiction in any case shall be predicated on the policy stated in § 724.303 above. Decisions shall be made by administrative action without referral to the Naval Discharge Review Board. Normally, they shall be made by the Executive Secretary of the Naval Discharge Review Board, or they may be referred to the President, Naval Discharge Review Board.

§ 724.305 Disposition of applications for discharge review.

One of three dispositions will be made of an application for review of a discharge:

(a) The application may be denied for reason of:

(1) Absence of jurisdiction;

(2) Previous review on the same evidence; or

(b) The application may be withdrawn by the applicant; or

(c) The application may be accepted and the discharge reviewed by the Naval Discharge Review Board, resulting in:

(1) Change to the discharge, or

(2) No change.

§ 724.306 Implementation of Naval Discharge Review Board decisions.

The Commandant of the Marine Corps and the Chief of Naval Personnel shall be notified by the Naval Discharge Review Board of decisions in each discharge review case and shall implement the decisions within their respective services.

§ 724.307 Evidence supporting applications.

In the absence of law, evidence or policy to the contrary, naval discharges shall be considered just, equitable and proper. When hearings are scheduled, applicants must be prepared to present their case at the scheduled time. In the absence of any other evidence, naval discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside available service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted will be returned for completion and resubmission.

§ 724.308 Review action in instances of unavailable records.

In the event that personnel or health records of the Department of the Navy associated with a requested review of discharge are not located at the custodial activity, the following action shall be taken by the Naval Discharge Review Board prior to consideration of the request for discharge review.

(a) A certification that the records are unavailable shall be obtained from the custodial activity.

(b) The applicant shall be notified of the situation and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this time period, the review may be conducted with information available to the Naval Discharge Review Board.

(c) The presumption of regularity in the conduct of Government affairs may be applicable in instances of unavailable records depending on the circumstances of the case. (*See* § 724.309.)

§ 724.309 Regularity of government affairs.

There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

§ 724.310 Availability of records.

(a) Prior to a review, applicants or their designated representatives may obtain copies of military records by submitting a Standard Form 180, *Request Pertaining to Military Records,* to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, Missouri 63132. The request must be submitted prior to the time

the DD Form 293 is submitted, since once the DD Form 293 is submitted, the records will be requested from the National Personnel Records Center by the Naval Discharge Review Board.

(b) When the Naval Discharge Review Board is not authorized to provide copies of documents that are under the cognizance of another Government department, office or activity, applications for such information must be made by the applicant to the cognizant authority. The Naval Discharge Review Board shall advise the applicant of the mailing address of the Government department, office, or activity to which the request should be submitted.

(c) The Naval Discharge Review Board may take steps to obtain additional evidence relevant to the discharge review under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests certain aspects of the review would be incomplete without the additional information or when the applicant presents testimony or documents which require additional information in order to enable proper evaluation. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(d) Prior to initiation of the decision process specified in § 724.807, the applicant and/or counsel/representative is entitled to request access to the records to be considered by the Naval Discharge Review Board in the discharge review.

(1) At a reasonable time prior to the initiation of the decision process, in any hearing conducted on request of an applicant, the Naval Discharge Review Board shall provide the applicant and/or counsel representative with a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel/medical records and any documents submitted by the applicant. The Naval Discharge Review Board shall also notify the applicant and/or counsel/representative of:

(i) The right to examine such documents or to be provided with copies of the documents upon request, (ii) the date by which such requests must be received, and (iii) the opportunity to respond within a reasonable period of time to be set by the Naval Discharge Review Board.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the Naval Discharge Review Board, shall prepare a summary of or extract from the document deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interest of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified sources shall not be considered by the Naval Discharge Review Board in its review of the case.

(e) Regulations of the Department of the Navy may be obtained by writing to the Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, D.C. 20310. In addition, certain regulations may be available at installations under the jurisdiction of the military service concerned.

§ 724.311 Attendance of witnesses.

Arrangements for attendance of witnesses testifying in behalf of the applicant at discharge review hearings are the responsibility of the applicant. The Naval Discharge Review Board is not authorized to subpoena or otherwise require their presence.

§ 724.312 Applicant's expenses.

Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, or counsel/representative will not be paid by the Department of Defense.

§ 724.313 Military representation.

Military officers desiring to act for or on behalf of an applicant in the presentation of a case before a Naval Discharge Review Board Panel are advised to consult legal counsel before undertaking such representation. Such representation may be prohibit-

ed by Title 18 United States Code, Chapters 11 and 15.

§ 724.314 Limitation—failure to appear for hearing.

Except as authorized or directed by the Secretary of the Navy further opportunity for personal appearance shall not be made available to an applicant who requests a hearing and who, after being duly notified of the time and place of the hearing, fails to appear at the appointed time and place of the hearing, either in person or by representative, not having made a prior, timely request for a continuance or withdrawal of the application. In such cases the applicant shall be deemed to have forfeited the right to a personal appearance and the Naval Discharge Review Board shall complete its review of the discharge based upon the evidence of record. Further requests for a personal hearing shall not be granted unless the applicant can demonstrate that prior failure to appear or to request continuance or withdrawal of the application was due to circumstances beyond the applicant's control.

§ 724.315 Limitation—reconsideration.

A discharge review shall not be subject to reconsideration except:

(a) Where the only previous consideration of the case was on the motion of the Naval Discharge Review Board;

(b) When the original discharge review did not involve a personal hearing and a personal hearing is desired, and the provisions of § 724.314 do not apply;

(c) Where changes in discharge policy are announced subsequent to an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

(d) Where the Naval Discharge Review Board determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings;

(e) Where an individual is to be represented by counsel/representative, and was not so represented in any previous consideration of the case by the Naval Discharge Review Board;

(f) Where the case was not previously considered under uniform standards published pursuant to Pub. L. 95-126 (Appendix E of this part) and such application is made before January 1, 1980, or within 15 years after the date of discharge; or

(g) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the previous review. The decision as to whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 724.316 Limitation—continuances and postponements.

(a) A continuance of a discharge review hearing may be authorized by the President of the Naval Discharge Review Board or presiding officer of the Naval Discharge Review Board Panel concerned, provided that such continuance is of reasonable duration and is essential to achieve a full and fair hearing. Where a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(b) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner or for the convenience of the Government.

§ 724.317 Withdrawal of application.

An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled

review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

§ 724.318 Review on motion of the Naval Discharge Review Board.

(a) Reviews of naval discharges may be initiated by the Naval Discharge Review Board on its own motion, (10 U.S.C. 1553) which includes reviews requested by the Veterans' Administration under Title 38 U.S.C. 1001, 3103 as amended by Pub. L. 95-126 of October 8, 1977. (*See* Appendix E of this part).

§ 724.319 Secretarial review of naval discharge review decisions.

(a) The decisions of the Naval Discharge Review Board are final, subject only to Secretarial review.

(b) The following categories of discharge cases are subject to the review of the Secretary of the Navy:

(1) All cases in which a minority of the Naval Discharge Review Board requests the recorded opinion be forwarded for consideration.

(2) Selected cases as appropriate in order to provide information to the Secretary on specific aspects of the discharge function or of the discharge review function which are of interest to the Secretary of the Navy.

(3) Any specific case which the Secretary has an interest.

(4) Any case which the President, Naval Discharge Review Board in his sole discretion believes is of significant interest to the Secretary.

(c) Material submitted prior to Secretarial review to correct alleged errors under the provisions of § 724.501(g) of this part, must be addressed to the President, Naval Discharge Review Board, and must be received within 25 days of the date on which the notification of the decision was mailed to the applicant. Requests or material received subsequent to that date shall not be considered unless a prior extension of time has been approved by the President, Naval Discharge Review Board, or for good cause shown as determined by the President, Naval Discharge Review Board.

§ 724.320 Scheduling of discharge reviews.

(a) If an applicant requests a personal appearance discharge review, or to be represented in absentia, the Naval Discharge Review Board shall provide a hearing in the Washington, D.C. area or at another site within the forty-eight contiguous states.

(b) The Naval Discharge Review Board shall subsequently notify the applicant and representative (if any) in writing of the personal appearance hearing time and place. This notice shall normally be mailed thirty to sixty days prior to the date of the hearing. if the applicant elects, this time limit may be waived and an earlier date set.

(c) When an applicant requests a documentary review, the Naval Discharge Review Board shall undertake the review as soon as practicable. Normally, documentary reviews shall be conducted in the order in which they are received.

§ 724.321 Personal appearance discharge review sites.

(a) The Naval Discharge Review Board shall be permanently located, together with its administrative staff, in the Washington, D.C. area. The Naval Discharge Review Board shall routinely conduct personal appearance discharge reviews and documentary reviews at this, its permanent office. Applicants located within a radius of three hundred miles from the Washington, D.C. area shall normally be required to present their cases in Washington, D.C. if they request a personal appearance review.

(b) In addition, as permitted by available resources, Naval Discharge Review Board Panels shall travel to other selected sites within the contiguous 48 states for the purpose of conducting reviews. The selection of sites and the frequency of visits shall be predicated on the number of requests pending within a region and the availability of resources. Applicants located within the radius of three hundred miles from sites selected for Naval Discharge Review Board Panel reviews shall normally be required to present their cases at the selected sites, if they have requested a personal appearance

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review. An exception shall be made if the applicant requests a personal appearance review in Washington, D.C.

(c) If an applicant who has requested a personal appearance review declines without justifiable cause to present a case to the Naval Discharge Review Board Panel when it is sited within three hundred miles of the location in the application, the applicant shall be deemed to have forfeited any right to a personal appearance before a traveling panel. Instead, the Naval Discharge Review Board Panel shall conduct a documentary review of the discharge and its decision shall be based on that review.

§ 724.322 Naval Discharge Review Board support and augmentation by Regular and Reserve activities.

(a) When a Naval Discharge Review Board Panel travels for the purpose of conducting hearings, it shall normally select as review sites Navy and Marine Corps installations in the area visited.

(b) The Naval Discharge Review Board Traveling Panel shall normally consist of members from Washington and augmentees from Regular and Reserve Navy and Marine Corps sources, as required.

(c) Naval and Marine Corps activities in the geographical vicinity of selected review sites shall provide administrative support and augmentation to a Naval Discharge Review Board Panel during its visit where such assistance can be undertaken without interference with mission accomplishment. The Naval Discharge Review Board shall coordinate requests for augmentees and administrative support through the Commandant of the Marine Corps, Chief of Naval Reserve, Commandants of the Naval Districts, and Directors of Marine Corps Districts, as appropriate.

(d) The administrative staff in Washington shall undertake all arrangements for Naval Discharge Review Board Traveling Panel visits and shall process associated review documents.

§ 724.323 Court-martial specifications, presumption concerning.

(a) Relevant and material facts stated in a court-martial specification, shall be presumed by the Naval Discharge Review Board Panel as established facts unless there is substantial credible evidence to rebut this presumption if the applicant was found guilty and the finding was not subsequently overturned by a reviewing authority.

(b) Relevant and material facts stated in a court-martial specification, in the face of which the applicant requested a discharge for the good of the service to avoid trial by court-martial, shall be considered in accordance with the following:

(1) If the accused was required to admit the facts contained in the charge sheet, or if the discharge authority was required to find that the facts stated therein were true, then the Discharge Review Board can presume the truth of such facts, unless there is substantial credible evidence to rebut this presumption; or

(2) If the discharge in lieu of court-martial only required a valid preferral,[1] the Discharge Review Board may presume that the signer either had personal knowledge of, or had investigated the matters set forth therein, and that the charges were true in fact to the best of the signer's knowledge and belief. The weight to be given this presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the Discharge Review Board. To the extent that the discharge proceeding reflects:

(i) An official determination that the facts stated in the charge sheet are true; (ii) that the accused admitted the facts stated in the charge sheet; or (iii) that the accused admitted guilt of the offense(s), then the presumption is strengthened. In accordance with § 70.5(b)(12)(vi) of Title 32 Code of

[1] Charges may be preferred by any person subject to the Uniform Code of Military Justice. The charges must be signed and sworn to before a commissioned officer authorized to administer oaths, and shall state: (1) That the signer has personal knowledge of, or has investigated the matters set forth therein; and (2) that the charges are true in fact to the best of the signer's knowledge and belief. 10 U.S.C. 830 (1976) (Art. 39 Uniform Code of Military Justice).

Federal Regulations, the presumption may be rebutted by "substantial credible evidence."

Subpart D—Principal Elements of the Navy Department Discharge Review System

§ 724.401 Applicants.

As defined in § 724.114.

§ 724.402 Naval Discharge Review Board.

As defined in § 724.102.

§ 724.403 President, Naval Discharge Review Board.

Supervises the Naval Discharge Review Board. (*See* Subpart J of this part.)

§ 724.404 Director, Naval Council of Personnel Boards.

Exercises administrative control and oversight of the naval discharge review process. (*See* Subpart J of this part.)

§ 724.405 Commandant of the Marine Corps (Code M) and the Chief of Naval Personnel.

Personnel managers of the Marine Corps and the Navy; responsible for providing limited support to the Naval Discharge Review Board and for implementation of departmental discharge review decisions. (*See* Subpart K of this part.)

§ 724.406 Chief, Bureau of Medicine and Surgery.

Custodian of Navy and Marine Corps health records. (*See* Subpart K of this part.)

§ 724.407 Chief of Naval Reserve.

Manages Naval Reserve resources. Responsible for providing limited support within available resources to the Naval Discharge Review Board. (*See* Subpart K of this part.)

§ 724.408 Secretary of the Navy.

The final authority within the Department of the Navy in discharge review.

Subpart E—Procedural Rights of the Applicant and Administrative Actions Preliminary to Discharge Review

§ 724.501 Procedural rights of the applicant.

Each applicant has the following procedural rights:

(a) Within 15 years after the date of discharge, to make a written request for review of the applicant's discharge if the discharge was other then the result of a general court-martial. The request may include such other statements, affidavits, or documentation as desired. (*See* §§ 724.302 and 724.303.)

(b) Prior to January 1, 1980, without regard to the date of discharge, to request review of the applicant's discharge if the discharge has not been reviewed previously under the procedures and standards set forth in Subparts H and I of this part and the applicant was administratively discharged under other than honorable conditions. (*See* § 724.303.)

(c) To have that review conducted by the Naval Discharge Review Board either in the Washington, D.C. area or other designated locations (*see* § 724.321), when a personal appearance discharge review is desired.

(d) To appear before the Naval Discharge Review Board in person with or without counsel/representative; with counsel/representative concurrence, to have counsel/representative present the applicant's case in the absence of the applicant; or to have the review conducted based on records and any additional documentation submitted by the applicant or counsel/representative.

(e) To request copies of any documents or other evidence to be considered by the Naval Discharge Review Board in the review of the applicant's discharge or dismissal other than the documents or evidence contained in the official record or submitted by the applicant prior to the conduct of the formal review and to be afforded an opportunity to examine such other documents or evidence or to be provided with copies of them. (*See* § 724.310.)

(f) To withdraw the request for discharge review without prejudice at any time prior to the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal. (*See* § 724.314.)

(g) To request a continuance of the review when the continuance is of a reasonable duration and essential to achieving a full and fair hearing. The request must indicate the reason why the continuance is required. (*See* § 724.316.)

(h) To request postponement of the discharge review for good and sufficient reason set forth in a timely manner. (*See* § 724.316.)

(i) To request reconsideration of the discharge review under the conditions set forth in § 724.315.

(j) To have access to the information to be considered by the Naval Discharge Review Board prior to the actual review of the applicant's case. (*See* § 724.310.)

(k) To have the applicant's right to privacy protected in any review conducted by the Naval Discharge Review Board. (*See* §§ 724.815 and 724.1003(g).)

(l) When appearing personally before the Naval Discharge Review Board:

(1) To introduce witnesses, documents, sworn or unsworn testimony. (*See* §§ 724.311 and 724.312.)

(2) To present oral or written arguments personally or through counsel/representative.

(m) To submit documents, affidavits, briefs or arguments in writing. When the counsel/representative appears in person before the Naval Discharge Review Board, arguments may be presented orally.

(n) To state clearly and specifically the contentions or issues which the applicant desires the Naval Discharge Review Board to answer in writing. These should be presented in writing by the applicant or counsel/representative. Although applicants are encouraged to state contentions/issues in writing, they may be stated orally at personal appearance hearings.

(o) To have the applicant's discharge reviewed under the standards of equity and propriety outlined in Subpart I of this part.

(p) To be provided with a written decision on the applicant's review.

(q) If the case is to be forwarded for Secretarial review, to present a timely statement rebutting any findings, conclusions, or reasons of the Naval Discharge Review Board or the President, Naval Discharge Review Board, which are alleged to be erroneous on the facts, against the substantial weight of the evidence, or contrary to law or governing regulations, prior to that Secretarial review.

§ 724.502 Actions to be taken by the applicant preliminary to discharge review.

(a) Application for Review of Discharge or Dismissal From the Armed Forces of the United States, DD Form 293 (See Appendix D of this Part) is to be used in requesting a discharge review. DD Form 293 is available at most military installations and regional offices of the Veterans' Administration. This form is to be signed personally by the applicant. In the event the discharged individual is deceased or incompetent, the form must be signed by an authorized individual as discussed in § 724.113.

(b) The application is to be accompanied by:

(1) A copy of the certificate of discharge, if available;

(2) A copy of the Armed Forces of the United States Report of Transfer or Discharge (DD-214), if available;

(3) Certification of death, incompetency and evidence of relationship in applicable cases (§ 724.113);

(4) Statements by the applicant specifically presenting contentions/issues of fact, law, or discretion, if any, which form the basis for the request;

(5) Other statements, affidavits, depositions, documents and information desired by the applicant to be considered by Naval Discharge Review Board.

(c) Correspondence relating to review of naval discharges should be addressed to:

Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, VA 22203, telephone No. (202) 696-4881.

§ 724.503 Naval Discharge Review Board response to application for discharge review.

(a) The Naval Discharge Review Board shall acknowledge receipt of the application.

(b) In the event a documentary review is requested, the applicant shall normally receive no further communication from the Naval Discharge Review Board until notified of the decision in the case.

(c) In the event a personal appearance discharge review is requested, the applicant shall be notified of the time and place of this review and shall be advised of the availability of the official documents to be considered by the Naval Discharge Review Board.

(d) A copy of Naval Discharge Review Board correspondence to an applicant shall be sent to the representative of record, if any.

§ 724.504 Naval Discharge Review Board actions preliminary to discharge review.

(a) When each application for discharge review is received by the Naval Discharge Review Board, the service record and health record of the applicant will be requested from the appropriate record custodian, usually the National Personnel Record Center, St. Louis, Missouri.

(b) Upon receipt, each record of service will be reviewed to determine whether or not the applicant appears to have been discharged under circumstances which might act as a bar to Veterans' Administration benefits under section 3103, Title 38, United States Code. These circumstances of discharge are:

(1) Discharge or dismissal by reason of the sentence of a general court-martial.

(2) Discharge as a conscientious objector who refused to perform military duty, to wear the uniform or otherwise to comply with lawful orders of competent military authority.

(3) Discharge as a deserter.

(4) Discharge on the basis, or as part of the basis, of an absence without authority from active duty for a continuous period of at least 180 days if such discharge was under conditions other than honorable. Additionally, such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

(5) Discharge or dismissal of an officer based on acceptance of the officer's resignation for the good of the service.

(6) Discharge, on his own application, during a period of hostilities, as an alien.

(c) If it appears that the applicant was not discharged under the circumstances noted in § 724.504(b), the discharge review will continue.

(d) If it appears that the applicant was discharged under one or more of the circumstances outlined in § 724.504(b), a written notification will be sent which informs the applicant that:

(1) An initial service record review reveals that the discharge may have been awarded under circumstances which make the applicant ineligible for receipt of Veterans' Administration benefits regardless of an action taken by the Naval Discharge Review Board.

(2) Separate action by the Board for Correction of Naval Records (BCNR) and/or the Veterans' Administration, in case of 180 days consecutive unauthorized absence disqualification, may confer eligibility for Veterans' Administration benefits.

(3) Provides instructions for making application to Board for Correction of Naval Records and for contacting the Veterans' Administration.

(4) Indicates that the discharge review will continue if the applicant so requests.

(5) Provides 45 days for the applicant to inform the Naval Discharge Review Board whether or not the applicant wishes the discharge review to continue.

(e) If the applicant does not respond within the allotted 45 days, or if in replying within 45 days the applicant requests a discharge review, the discharge review will continue.

(f) If the applicant replies within 45 days and requests the discharge review not take place, the case will be closed without further action and the records will be returned to storage.

Subpart F—Naval Discharge Review Board Mission and Functions

§ 724.601 General.

The Naval Discharge Review Board is a component of the Naval Council of Personnel Boards and has its offices located in the Washington, D.C. area. The Naval Discharge Review Board conducts documentary reviews and personal appearance reviews, in the Washington, D.C. area and, on a traveling basis, at selected sites within the 48 contiguous states. Regional site selection is predicated on the number of pending applications accumulated from a given geographical area and the resources available to support distant personal appearance reviews. The Naval Discharge Review Board does not maintain facilities other than at its Washington D.C. area offices.

§ 724.602 Mission.

To decide, in accordance with standards of naval law and discipline and the standards for discharge review set forth in Subpart I of this part, whether a discharge or dismissal from the naval service is proper and equitable, or whether it should be changed.

§ 724.603 Functions.

(a) Meet as frequently as necessary to provide expeditious review of naval discharges.

(b) Meet at locations within the 48 contiguous states as determined appropriate on the basis of the numbers of discharge review applications received from various geographical areas and of available resources and facilities.

(c) Review applications for review of discharges.

(d) In consonance with directives of higher authority and the policies set forth in this part, grant or deny change of discharges.

(e) Promulgate decisions in a timely manner.

(f) Maintain a system of records.

(g) Maintain liaison in discharge review matters with:

(1) General Counsel of the Navy;

(2) Commandant of the Marine Corps;

(3) Chief of Naval Personnel;

(4) Judge Advocate General of the Navy;

(5) Chief of Naval Reserve;

(6) Chief, Bureau of Medicine and Surgery;

(7) Veterans' service organizations;

(8) Discharge review boards of the other services, using the Army Discharge Review Board as a focal point for service coordination.

(h) Protect the privacy of individuals whose records are reviewed.

(i) Maintain for public access a reading file and associated index of records of Naval Discharge Review Board proceedings in all reviews undertaken subsequent to July 1, 1975. (*See* § 724.814.)

Subpart G—Organization of the Naval Discharge Review Board

§ 724.701 Composition.

The Naval Discharge Review Board acting in plenary review session shall be composed of five members. Normally the members shall be career military officers, however, officers of the inactive Navy and Marine Corps Reserves may serve as members when designated to do so by the President, Naval Discharge Review Board.

(a) Presiding officers of the Naval Discharge Review Board shall normally be Navy or Marine Corps officers in the grade of Captain/Colonel or above.

(b) The remaining Naval Discharge Review Board membership shall normally be not less than the grade of Lieutenant Commander/Major with preference being given to senior grades.

(c) Naval Discharge Review Board members shall be designated from the following sources:

(1) Officers performing duty with the Naval Council of Personnel Boards;

(2) Officers nominated by the Commandant of the Marine Corps;

(3) Officers nominated by the Chief of Naval Reserve, on request;

(4) Officers nominated by Director of Marine Corps Districts, on request;

(5) Officers nominated by the Commandants of the Naval Districts.

(d) At least three of the five members of the Naval Discharge Review Board shall belong to the service from

which applicant whose case is under review was discharged.

(e) Individual membership in the Naval Discharge Review Board may vary within the limitations of the prescribed composition.

§ 724.702 Executive management.

The administrative affairs of the Naval Discharge Review Board shall be managed by the Executive Secretary. This responsibility shall include schedules, records, correspondence, and issuance of Naval Discharge Review Board decisions.

§ 724.703 Recorders.

The Naval Discharge Review Board shall be assigned a number of Navy and Marine Corps officers who shall act as recorders for discharge review sessions. The number of recorders assigned shall be consistent with Naval Discharge Review Board case loading. These officers shall normally be of the rank of Lieutenant Commander/Major or Commander/Lieutenant Colonel.

§ 724.704 Counsel.

Normally the Naval Discharge Review Board shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the Naval Discharge Review Board, such shall be obtained routinely by reference to the senior Judge Advocate assigned to the Office of the Director, Naval Council of Personnel Boards. In unusual cirumstances, the Naval Discharge Review Board Traveling Panel may request advice from the Officer-in-Charge of the nearest Naval Legal Service Office. In addition, the Naval Discharge Review Board may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Subpart H—Procedures of the Naval Discharge Review Board

§ 724.801 Material to be considered in discharge review.

In the process of its review of discharges, the Naval Discharge Review Board shall examine available records and pertinent regulations of the Department of the Navy, together with such information as may be presented by the applicant and/or representative, normally to include:

(a) The application for discharge review;

(b) Statements, affidavits or documentation, if any, accompanying the application or presented during hearings;

(c) Testimony, if any, presented during hearings;

(d) Service and health records;

(e) A brief of pertinent facts extracted from the service and health records, prepared by the Naval Discharge Review Board recorder, using NAVSO Form 1900/5C (Appendix D of this part).

§ 724.802 Contentions/issues.

(a) Applicant must state clearly and specifically their contentions, and/or the issues of fact, law, or discretion for written determination to be made in accordance with § 724.810.

(b) In addition to contentions/issues considered by the Naval Discharge Review Board under § 724.802(a), the Naval Discharge Review Board shall consider such issues of fact, law, or discretion as are discerned by them in the discharge review process.

(c) The Naval Discharge Review Board shall state its findings and conclusions and reasons with respect to the contentions and issues as required by § 724.810.

(d) Except as provided in § 724.802(d)(4), all matters that appear to be contentions/issues submitted by an applicant or counsel shall be listed verbatim in the decisional document and appended thereto. The Naval Discharge Review Board must provide findings, conclusions, and reasons only for contentions/issues submitted that are stated clearly and specifically. The Naval Discharge Review Board shall

prepare decisional documents in the following manner, with respect to applicant's contentions/issues:

(1) If contentions/issues are stated clearly and specifically by an applicant or counsel, and they are not subsequently amended by the applicant or counsel, these contentions/issues shall be listed verbatim in the decisional document or appended thereto: (*See* § 724.810(h));

(2) If there are no clearly and specifically stated contentions/issues presented by an applicant or counsel, but contentions/issues are discerned by the Naval Discharge Review Board from an application to the Naval Discharge Review Board for review of discharge, those portions of the application from which the contentions/issues were discerned shall be listed verbatim in the decisional document or appended thereto, and the decisional documents shall note that "THE APPLICANT FAILED TO PROVIDE CLEARLY AND SPECIFICALLY STATED CONTENTIONS/ISSUES. IN THE ABSENCE OF SUCH SPECIFICITY THE BOARD DISCERNED THE FOLLOWING CONTENTIONS/ISSUES USING INFORMATION FROM THE APPLICANT'S STATEMENT:". Whether or not the Board discerns any contentions/issues from the applicant's statement, however, if the entire applicant's statement is included on the Form DD 293, this statement shall be quoted verbatim in the summary of applicant's statement portion of the decisional document;

(3) If no applicant contentions/issues are discernible from an application but the Naval Discharge Review Board determines that there are issues that can be addressed, the lack of applicant contentions/issues and the existence of Naval Discharge Review Board contentions/issues must be noted on the decisional document. Issues which are raised by the Naval Discharge Review Board must also be noted on the decisional document in addition to any listed applicant contentions/issues; and

(4) An applicant or counsel shall not be required to amend a contention/issue. If an applicant or counsel at a personal appearance hearing decides to change contentions/issues previously submitted to the Naval Discharge Review Board, the applicant may withdraw the contention/issue and, if desired, submit an amended contention/issue. Any such decision made at the hearing shall be a part of the record of proceedings, and the decisional document shall note that "AT THE BEGINNING OF THE HEARING, THE APPLICANT INTRODUCED THE FOLLOWING CONTENTIONS/ISSUES AS THE ONLY CONTENTIONS/ISSUES THE APPLICANT IS REQUESTING THE BOARD TO CONSIDER:".

§ 724.803 Summary of evidence to be displayed in records of review proceedings.

The Naval Discharge Review Board shall summarize the evidence considered in each discharge review. This shall include:

(a) The date, type and reason of the discharge and the discharge regulation under which it was issued;

(b) The circumstances and character of the applicant's service as extracted from service records, health records and information provided by other Government authority or the applicant;

(c) The relevant evidence developed from testimony, when the review involves a personal appearance;

(d) Reference to applicant's written brief, if any. Factual information and/or advice from applicant's brief relied upon for final decision shall normally be set forth verbatim. In lieu thereof, a copy of the applicant's brief may be appended.

(e) Reference to advisory opinions, if any. Factual information and/or advice from advisory opinions relied upon for final decision shall normally be set forth verbatim. In lieu thereof, a copy of the advisory opinion(s) may be appended. Care must be taken to ensure that the summary of evidence also includes those factors required by applicable service regulations to be considered for the determination of the type and reason/basis for the discharge in question.

§ 724.804 Findings, conclusions, and reasons upon contentions/issues.

After carefully weighing the evidence, the Naval Discharge Review Board shall prepare findings, a conclusion and reasons for each contention/issue raised by the applicant. (*See* §§ 724.121, 724.122, 724.123, and 724.810(d).) A conclusion shall be stated as either "Valid" or "Invalid".

§ 724.805 Findings, conclusions, and reasons upon which decision is based.

The Naval Discharge Review Board shall record its findings, conclusions and reasons as to whether a discharge should remain unchanged or be changed. The nature of any change shall be specified clearly. (*See* §§ 724.124, 724.125, 724.126, and 724.810.)

§ 724.806 Decision/recommendation.

The determination by the Naval Discharge Review Board as to whether or not a discharge should be changed and a statement of the type and reason/basis of the discharge and the specific authority for decision/recommendation—*e.g.*, General Discharge/Unfitness for Frequent Involvement (Marine Corps Separations and Retirement Manual, paragraph 6017.2b). (*See* § 724.127.)

§ 724.807 Decision process.

(a) Naval Discharge Review Board Panels shall meet in plenary session to review discharges and exercise their discretion on a case-by-case basis in applying the standards set forth in Subpart I of this part.

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the Naval Discharge Review Board panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each Naval Discharge Review Board member shall act under oath or affirmation requiring careful, objective consideration of the application. Naval Discharge Review Board members are responsible for eliciting all facts necessary for a full and fair hearing. They shall consider all information presented to them by the applicant. In addition, they shall consider available service and health records, together with such other records as may be in the files of the Department of the Navy and relevant to the issues before the Naval Discharge Review Board, and any other evidence obtained in accordance with Part 70, Title 32, Code of Federal Regulations or this part.

(d) If the applicant does not appear in person and the designated counsel/representative does not appear in the applicant's behalf, the Naval Discharge Review Board shall review the discharge on the basis of available records, documentary evidence submitted by or on behalf of the applicant and any other relevant evidence obtained in accordance with Part 70, Title 32, Code of Federal Regulations or this part.

(e) If the applicant appears in person or the designated counsel/representative appears before the Naval Discharge Review Board in the applicant's behalf, the Naval Discharge Review Board shall review the application on the basis of testimony on behalf of the applicant, available official records, documentary evidence submitted by or on behalf of the applicant and any other relevant evidence obtained in accordance with Part 70, Title 32, Code of Federal Regulations or this part.

(f) *Application of standards.* (1) When the Naval Discharge Review Board determines that an applicant's discharge was improper (§ 724.902), the Naval Discharge Review Board will determine which reason/basis for discharge should have been assigned based upon the facts and circumstances properly before the discharge authority in view of the service regulations governing reasons/bases for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable (§ 724.903), the provisions in the discharge regulations as to the type of discharge under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

(2) When the Naval Discharge Review Board determines that an applicant's discharge was inequitable

(§ 724.903), any change will be based on the evaluation of the applicant's overall record of service and relevant Department of the Navy regulations.

(g) Voting shall be conducted in closed session, a majority of the five members' votes constituting the Naval Discharge Review Board decision. The presiding officer shall have a single vote. Decisions shall be reached by formal voting.

(h) Details of closed session deliberations of a Naval Discharge Review Board are privileged information and shall not be divulged.

(i) Minority written opinions, while not required, may be submitted by any minority member(s) and shall contain statements of findings, conclusions and reasons for only those contentions/issues on which the minority disagrees with the majority. The minority's written statement of findings, conclusions and reasons are also required to meet the standards of §§ 724.804 and 724.805. If the minority disagrees with the majority decision/recommendation and writes an opinion as just described, that opinion shall contain the minority's decision/recommendation and the specific authority for that decision/recommendation. (*See* § 724.806.) In all cases, in which a minority of the Naval Discharge Review Board requests Secretarial review, the entire case, including the majority and minority written opinions will be forwarded to the Secretary of the Navy via the President, Naval Discharge Review Board. The President, Naval Discharge Review Board's recommendations to the Secretary of the Navy will be attached to the majority and minority written opinions and will include findings, conclusions and reasons, in the form earlier described herein.

(j) The Naval Discharge Review Board may request advisory opinions from staff officers of the Department of the Navy. The opinions are advisory in nature and are not binding on the Naval Discharge Review Board in its decision-making process.

§ 724.808 Issuance of decisions following discharge review.

The applicant and counsel/representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel/representative, if any, and to the Service Personnel Manager.

(a) Notification to applicants, with copies to counsel/representatives, shall normally be made through the United States Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document, Form NAVSO 1900/5C (Appendix D of this part).

(b) Notification to the Commandant of the Marine Corps (Code M) and the Chief of Naval Personnel shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall normally be issued en bloc and shall bear the personal signature of the Executive Secretary of the Naval Discharge Review Board in certification of completeness and accuracy. Delivery of en bloc notifications shall normally be via interoffice mail.

(c) Actions on review by the Secretary of the Navy, when occurring, shall be provided to the applicant and counsel/representative in the same manner as the notification of the review decision.

§ 724.809 Conduct of personal appearance discharge reviews.

(a) Personal appearance discharge reviews shall be conducted with a recognition of the individual's rights to privacy. Accordingly, presence at hearings of individuals other than those whose presence is required will be limited to persons authorized by the Secretary of the Navy, President of the Naval Discharge Review Board, Presiding Officer of the Naval Discharge Review Board Panel or expressly requested by the applicant, subject to reasonable limitations based upon available space. If, in the opinion of the President of the Naval Discharge Review Board or Presiding Officer of the Naval Discharge Review Board Panel, the presence of other individuals would be prejudicial to the interests of the applicant or the Govern-

ment, such reviews may be held in closed session.

(b) Personal appearance discharge reviews shall be conducted with the objective of eliciting all the facts bearing on the case. Naval Discharge Review Board members shall attempt to elicit all the facts necessary for a full and fair hearing, whether or not the applicant is accompanied by a representative.

(c) Each board member shall act under the oath or affirmation as set forth in Appendix C of this part.

(d) *Evidence and testimony.* (1) The Naval Discharge Review Board may consider any evidence obtained in accordance with Part 70, Title 32 Code of Federal Regulations or this part.

(2) Formal rules of evidence shall not be applied in Naval Discharge Review Board proceedings. The presiding officer shall rule on matters of procedure and shall insure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses.

(3) Applicants having personal appearance reviews shall be permitted to introduce witnesses, documents, sworn or unsworn statements or other information on their behalf, all at no expense to the Department of Defense.

(4) Applicants may present oral or written arguments personally and/or through counsel/representatives.

(5) Applicants who present sworn or unsworn statements and witnesses may be questioned by the Naval Discharge Review Board. All testimony shall be taken under oath or affirmation unless the applicant specifically requests to make an unsworn statement.

§ 724.810 Decisional document.

A decisional document shall be prepared for each review conducted by the Naval Discharge Review Board. See copy in Appendix D of this part (Record of Review of Discharge, NAVSO 1900/5C). At a minimum this document shall contain:

(a) The date, type and reason/basis for the discharge issued to the applicant upon separation from the naval service, including the specific discharge regulation under which the discharge was issued.

(b) The circumstances and character of the applicant's service as extracted from service records, health records and information provided by other Government authority or the applicant, such as, but not limited to:

(1) Date of enlistment.

(2) Period of enlistment.

(3) Age at enlistment.

(4) Length of service.

(5) Periods of unauthorized absence.

(6) Conduct and efficiency ratings (numerical or narrative).

(7) Highest rank achieved.

(8) Awards and decorations.

(9) Educational level.

(10) Aptitude test scores.

(11) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date of offense or punishment).

(12) Convictions by court-martial.

(13) Prior military service and type of discharge received.

(c) Reference to the written brief, documentary evidence, and testimony presented to the Naval Discharge Review Board by or on behalf of the applicant.

(d) *Statements of findings, conclusions, and reasons consisting of:* (1) Findings, conclusions, and reasons on all issues of fact, law, or discretion upon which the decision on the application is based, including those factors required by naval service regulations to be considered for determination of the type of and reason/basis for the discharge in question.

(2) Findings, conclusions, and reasons on all other issues of fact, law, or discretion raised by the applicant in accordance with § 724.802, including claims by the applicant that statutory, regulatory, and/or constitutional provisons were violated, and such other claims made by the applicant, which in the opinion of the Naval Discharge Review Board would have warranted greater relief than that afforded the applicant by the Naval Discharge Review Board decision if resolved in the applicant's favor. If the applicant has clearly and specifically stated a contention/issue, which in the opinion of the Naval Discharge Review would not have warranted

greater relief than that recommended by the Naval Discharge Review Board if resolved in the applicant's favor, then the Board shall indicate this in the decisional document.

(3) Findings, conclusions, and reasons as to whether or not any change, correction or modification should be made in the type or reasons/basis of the discharge; and, if so concluded, the particular changes, corrections or modifications that should be made.

(4) If the Naval Discharge Review Board adopts statements of findings, conclusions and reasons from a prior decisional document for the same applicant, these findings, conclusions and reasons must be restated in the new decisional document.

(5) If a discharge is changed but not to fully honorable, unless a lesser type discharge is specifically requested by the applicant, a statement of the reasons for the decision not to change the discharge to fully honorable.

(e) Advisory opinions, including those containing factual information, where such opinions have been relied upon for final decisions or have been accepted as a basis for rejecting any of the applicant's claims. Such advisory opinions or relevant portions thereof that are not fully set forth in the statement of findings, conclusions, and reasons shall be incorporated by reference therein. A copy of such opinions shall be appended to the decision and included in the record of proceedings.

(f) A record of the Naval Discharge Review Board members' names and votes.

(g) The Naval Discharge Review Board decision and written minority opinions if any. In a unanimous decison the decisional document shall be signed by the presiding officer and authenticated by the recorder. In a split decision all members will sign the decisional document in the place where their vote is recorded. If the decisional document cannot be signed by the presiding officer or authenticated by the recorder by reason of death, disability or absence, the decisional document shall be signed by the next senior officer available and may be authenticated by another member who was actually at the conclusion of the proceedings. If the decisional document in a split decision cannot be signed by a member(s) by reason of death, disability or absence, the vote of such member(s) may be recorded by another member who was actually present at the conclusion of the proceedings. The decisional document will contain a brief statement explaining any authorized alternative signature(s).

(h) A verbatim listing of the contentions or issues presented by the applicant, if not included elsewhere.

§ 724.811 Records of Naval Discharge Review Board proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared.

(b) At a minimum, the record will include the following:

(1) An application for review (except non-motion reviews).

(2) A summary of testimony in personal appearance hearings.

(3) Documentary evidence or copies thereof considered by the Naval Discharge Review Board other than service and health record.

(4) Briefs/arguments submitted by or on behalf of the applicant.

(5) Advisory opinions considered by the Naval Discharge Review Board.

(6) The findings, conclusion, and reasons developed by the Naval Discharge Review Board.

(7) Reference to the document notifying the cognizant personnel manager of the discharge review action in each case.

(8) Minority reports, if any.

(9) A copy of the decisional document (NAVSO 1900/5C).

§ 724.812 Secretarial review of Naval Discharge Review Board decisions.

Cases accepted for review by the Secretary of the Navy, or by one to whom the reviewing authority has been delegated, will be considered in accordance with the standards set forth in Subpart I of this part.

(a) On every decision of the Naval Discharge Review Board that is accepted for review by the Secretary of the Navy, or by one to whom reviewing authority has been delegated, the

decision on review will be made in writing.

(b) In every case, the decision of the Naval Discharge Review Board and reviewing authority, if any, will include a statement of findings, conclusions, and reasons, except where the reviewing authority expressly adopts, in whole or in part, the statement of findings, conclusions and reasons of the Naval Discharge Review Board. Similarly, where the reviewing authority adopts the Naval Discharge Review Board's statement of findings, conclusions, and reasons, there is no requirement for duplicative publication and indexing under terms of § 724.814.

§ 724.813 Final disposition of the record of proceedings.

(a) The original record of proceedings and all appendices thereto shall in all cases be incorporated in the service record of the applicant and the service record shall be returned to the custody of the Naval Personnel Records Center, St. Louis, Missouri, via the service personnel manager, if applicable.

(b) A case file consisting of a complete copy of the record of the Naval Discharge Review Board proceedings and hearing transcripts, if any, shall be maintained for reference by the Naval Discharge Review Board for a period of one year, after which the copy of the record of proceedings shall be destroyed or transferred to the Washington National Records Center, Suitland, Maryland.

§ 724.814 Availability of Naval Discharge Review Board documents for public inspection and copying.

(a) A copy of the decisional document prepared in accordance with § 724.810 shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying. Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(c) Any other privileged or classified material contained in or appended to any documents required by this instruction to be furnished the applicant and counsel/representative or made available for public inspection and copying may be deleted therefrom, only if a written statement of the basis for the deletions is provided the applicant and counsel/representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(d) Naval Discharge Review Board documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents shall be indexed in a usable and concise form so as to enable the public and those who represent applicants before the Naval Discharge Review Board to isolate from all these decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under, and/or reasons for, which the Naval Discharge Review Board or the Secretary of the Navy granted or denied relief.

(1) The reading file index shall include, in addition to any other items determined by the Naval Discharge Review Board, the case number, the date, the type, the reason/basis, and authority for the discharge. It shall further include the decisions of the Naval Discharge Review Board and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions and reasons.

(2) The index should be made available at sites selected for Naval Discharge Review Board Traveling Panel reviews at least 30 days prior to the arrival of the Panel. Applicants at such sites shall be so advised in the notice of scheduled reviews.

(3) The Naval Discharge Review Board is responsible for timely submission to the Reading Room of individual case information required for a quarterly update of indexes. The indexes shall be available for public inspection and/or purchase at the Read-

ing Room. This information will be provided to applicants in the notice of scheduled hearings.

(4) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to:

Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, D.C. 20310.

§ 724.815 Privacy Act information.

Information protected under the Privacy Act is involved in the discharge review functions. The provisions of DoD Directive 5400.11 will be observed throughout the processing of a request for review of discharge.

Subpart I—Standards for Discharge Review

§ 724.901 Objective of discharge review.

The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable naval service. No factors shall be established which require automatic change or denial of a change in a discharge. Neither the Naval Discharge Review Board nor the Secretary of the Navy shall be bound by any methodology of weighing of the factors in reaching a determination. In each case, the Naval Discharge Review Board or the Secretary of the Navy shall give full, fair, and impartial consideration to all applicable factors prior to reaching a decision.

§ 724.902 Propriety of the discharge.

A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(a) There exists an error of fact, law, procedure or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby. Such error shall constitute prejudicial error, if there is substantial doubt that the discharge would have remained the same if the error had not been made; or

(b) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

§ 724.903 Equity of the discharge.

A discharge shall be deemed to be equitable unless:

(a) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that:

(1) Current policies or procedures represent a substantial enhancement of the rights afforded the applicant in such proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration; or

(b) At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member; or

(c) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the Naval Discharge Review Board viewed in conjunction with the factors listed in this subparagraph and the service regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(i) Service history, including date of enlistment, period of enlistment, highest rank/rate achieved, conduct or efficiency evaluations (numerical or narrative).

(ii) Awards and decorations.
(iii) Letters of commendation or reprimand.
(iv) Combat service.
(v) Wounds received in action.
(vi) Records of promotions and demotions.
(vii) Level of responsibility at which the applicant served.
(viii) Other acts of merit that may not have resulted in a formal recognition through an award or commendation.
(ix) Length of service during the service period which is the subject of the discharge review.
(x) Prior military service and type of discharge received or outstanding post-service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review.
(xi) Convictions by court-martial.
(xii) Records of nonjudicial punishment.
(xiii) Convictions by civil authorities while a member of the naval service, reflected in the discharge proceedings or otherwise noted in the service records.
(xiv) Records of periods of unauthorized absence.
(xv) Records relating to a discharge in lieu of court-martial.
(2) Capability to serve, as evidenced by factors such as:
(i) Total capabilities. This includes an evaluation of matters such as age, education level, and aptitude scores. Consideration may also be given as to whether the individual met normal military standards of acceptability for naval service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to the naval service.
(ii) Family/personal problems. This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.
(iii) Arbitrary or capricious actions. This includes actions by individuals in authority which constitute a clear abuse of such authority and which, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.
(iv) Discrimination. This includes unauthorized acts as documented by records or other evidence.

Subpart J—Director, Naval Council for Personnel Boards and President, Naval Discharge Review Board

§ 724.1001 Mission.

To oversee and administer discharge review procedures within the Department of the Navy.

§ 724.1002 Functions: Director, Naval Council of Personnel Boards.

(a) Make recommendations to the Secretary of the Navy regarding the organization, tasking and resources of the Naval Discharge Review Board and its associated administative support.
(b) Submit recommendations to the Secretary of the Navy regarding policy and procedures for discharge review.
(c) Provide administrative and clerical support for the Naval Discharge Review Board.
(d) Inform the Secretary of the Navy of matters of interest to him.
(e) Maintain a system of records, including as a minimum:
(1) Records specified for the Naval Discharge Review Board as stipulated in the procedures prescribed in Subpart H of this part.
(2) Records required for the administration of military and civilian personnel.
(3) Files of correspondence received and issued.
(f) Prepare and submit to the Secretary of the Navy, a semiannual report covering the operations of the Naval Discharge Review Board.
(g) Establish billet/position assignment criteria for the Naval Discharge Review Board.
(h) Propose to the Secretary of the Navy, changes to the Department of the Navy Manual for Discharge Review.
(i) Issue requisite precepts and remove or add members to Naval Discharge Review Board from personnel detailed to serve on the Naval Council

of Personel Boards, or from personnel otherwise made available.

§ 724.1003 Functions: President, Naval Discharge Review Board.

(a) Exercise primary cognizance within the Department of the Navy for matters relating to discharge review.

(b) Supervise and direct the activities of the Naval Discharge Review Board.

(c) Maintain appropriate liaison with discharge review activities in other services: Use Army Discharge Review Board as focal point for service coordination.

(d) Maintain coordination with the Commandant of the Marine Corps (Code M) and the Chief of Naval Personnel in matters associated with discharge review.

(e) Screen all cases forwarded to the Secretary. In those cases, the President shall provide the Secretary with the Record of Review of Discharge (NAVSO 1900/5C), the service and health records, if available, a statement of the President's findings, conclusions, and reasons, except in the event that he expressly adopts the statement of findings, conclusions, and reasons of the Panel, and any additional statements submitted by the applicant pursuant to § 724.501(g). Where the President adopts such statements, publication and indexing under the terms of § 724.814 is not required where such would duplicate existing publication and indexing of the same material.

(f) In conformance with Secretary of the Navy Instruction 5211.5A, protect the privacy of individuals in connection with discharge review.

(g) Assure that Naval Discharge Review Board functions are administered in accordance with the appropriate Secretary of the Navy instructions dealing with privacy and access to information.

(h) Convene the Naval Discharge Review Board as authorized by the Secretary of the Navy.

(i) Direct the movements of the Naval Discharge Review Board Traveling Panel(s) on the basis of regional hearing requests.

(j) Monitor the performance of the naval discharge review system. Make recommendations for changes and improvements. Take action to avoid delays in processing of individual discharge review actions.

(k) Provide Naval Discharge Review Board inputs for the maintenance of a public reading file and maintain associated Naval Discharge Review Board indexes updated quarterly.

Subpart K—Responsibilities in Support of the Naval Discharge Review Board

§ 724.1101 Responsibility.

The Commandant of the Marine Corps, Chief of Naval Personnel, Chief of Naval Reserve, Chief, Bureau of Medicine and Surgery, and chiefs of other bureaus and offices of the Department of the Navy shall provide limited support to the Naval Discharge Review Board.

§ 724.1102 Functions of the Commandant of the Marine Corps and the Chief of Naval Personnel.

(a) Provide and facilitate access by the Naval Discharge Review Board to service/health records and other data associated with performance of duty of applicants.

(b) Advise the Naval Discharge Review Board of developments in personnel management which may have a bearing on discharge review judgments.

(c) Implement the discharge review decisions of the Naval Discharge Review Board and those of higher authority within respective areas of cognizance.

(d) Include the record of Naval Discharge Review Board proceedings as a permanent part of the service record of the applicant in each case.

(e) Issue clemency discharge certificate when notified that an individual has met the requirements.

(f) Where appropriate, recommend cases for Naval Discharge Review Board review on its own motion.

(g) Provide qualified personnel as Naval Discharge Review Board members, recorders and administrative staff.

(h) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

(1) The right to a review of his or her discharge under provisions of 10 U.S.C. 1553, and

(2) The procedures for applying for such a review.

(i) Provide Navy and Marine Corps units and activities with information on the mission of the Naval Discharge Review Board through entries in appropriate personnel administration directives.

§ 724.1103 Functions of the Chief, Bureau of Medicine and Surgery.

Facilitate, as required, access by the Naval Discharge Review Board to health records of applicants.

§ 724.1104 Functions of the Commandant of the Marine Corps and Chief of Naval Reserve (refer to § 724.322).

(a) Upon request and within available resources, provide qualified Reservists to serve as members of the Naval Discharge Review Board.

(b) Upon request, provide appropriate accommodations to the Naval discharge Review Board Traveling Panels for purposes of conducting review at Naval and Marine Corps Reserve Centers.

§ 724.1105 Functions of the Commandants of Naval Districts and Directors of Marine Corps Districts (refer to § 724.322).

Upon request and within available resources, provide administrative support and augmentation to Naval Discharge Review Board Traveling Panels.

[illegible]

APPENDIX B—POLICY STATEMENTS BY THE SECRETARY OF DEFENSE—ADDRESSING CERTAIN CATEGORIES OF DISCHARGES

Secretary of Defense memorandum of August 13, 1971, to the Secretaries of the Military Departments, The Chairman, Joint Chiefs of Staff; Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users:

"Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

"Accordingly, each Secretary of a Military Department, acting through his Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

"The statute of limitations for review of discharges within the scope of this policy will be in accordance with 10 United States Code 1553.

"This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971."

Secretary of Defense memorandum of April 28, 1972, to Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff; Subject: Review of Punitive Discharges Issued to Drug Users:

"Reference is made to Secretary Packard's memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 1971, subject: 'Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users.'

"My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

"It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issued solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

"Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, Sections 874(b), 1552 and 1553.

"This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

"Former service members requesting a review will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized."

[44 FR 76486, Dec. 27, 1979]

APPENDIX C—OATH OF AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation which shall continue in effect throughout service with the Board.

OATH/AFFIRMATION

I, ————, do swear (or affirm) that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

[44 FR 76486, Dec. 27, 1979]

APPENDIX D—PRINCIPAL FORMS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD

Attachment	Form	Title
1	DD 293	Application for Review of Discharge or Dismissal From the Armed Forces of the United States.
2	NAVSO 1900/5C.	Part 1—Review of Discharge (Applicant's Contentions/Issues).

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Attachment	Form	Title
	NAVSO 1900/5c	Part 2—Review of Discharge (Summary of Evidence).
	do	Part 3—Review of Discharge (Findings/Conclusions/Reasons upon Contentions/Issues).
	do	Part 4—Review of Discharge (Findings/Conclusions/Reasons upon which Decision is based; Decision/Recommendation; Membership; Votes; Signatures).
	do	Part 5—Review of Discharge (Minority Findings/Conclusions/Reasons; Signatures).
	do	Part 6—Review of Discharge (President, NDRB Findings/Conclusions/Reasons; Signature).
	do	Part 7—Review of Discharge (Decision—Secretary of the Navy).
3	Letter	En Bloc Notification of Decision to Commandant, Marine Corps (Change).
4	Letter	En Bloc Notification of Decision to Commandant, Marine Corps (No Change).
5	Letter	En Bloc Notification of Decision to Chief of Naval Personnel (Change).
6	Letter	En Bloc Notification of Decision to Chief of Naval Personnel (No Change).

NOTE: The forms appearing in Appendix D, published at 44 FR 76495 through 76508, Dec. 27, 1979, are not carried in the Code of Federal Regulations.

[44 FR 76494, Dec. 27, 1979]

APPENDIX E—VETERANS' BENEFITS

91 Stat. 1106

Public Law 95-126, Oct. 8, 1977

95th Congress

AN ACT

To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of Title 38, United States Code, is amended by—

(1) inserting "or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence." after "deserter," in subsection (a), and by inserting a comma and "notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10" before the period at the end of such subsection; and

(2) adding at the end of such section the following new subsection:

"(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Veterans' Administration shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standards (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions: and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

"(2) Notwithstanding any other provision of law—

"(A) no person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Veterans' Administration except upon a determination, based on a case-by-case review, under standards (meet-

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Appendix A—Methods by which Individuals May Be Involuntarily Separated from the Naval Service (Other Than by Reason of Being Physically Unfit)

Category	Method	Called	Discharge Certificate/Type	Reference	Remarks
Commissioned Officer (USN/USNR).	Sentence of GCM	Dismissal	No	BUPERSMAN 3850100-10	Receives ltr from SECNAV vice discharge certificate.
USN Officer (w/less than 3 yrs).	Board of officers	Revocation of commission	Yes (Hon, Gen, OTH)	10 U.S.C. 6392 SECNAVINST 1920.6	Only applies to USN officer with less than 3 yrs *as a regular*. No authority to board officer with more than 3 yrs at USN officer.
USNR Officer	Board of officers	Discharge	Yes (Hon, Gen, OTH)	10 U.S.C. 1162 10 U.S.C. 1163 SECNAVINST 1920.6	Very limited exceptions permit discharge without board.
Commissioned Officer (USN/USNR).	Secretarial action (acting for President) without board	Dropping from rolls	No	10 U.S.C. 1161(USN) 10 U.S.C. 1163(USNR)	Receives ltr from SECNAV vice discharge certificate. Requires 3 mos UA or civilian conviction and sentence to penitentiary. In case of reservists, only requires Secretarial vice Presidential action.
Permanent Regular Warrant Officer.	Board of officers	Termination of appointment	Yes (Hon, Gen, OTH)	10 U.S.C. 1165 10 U.S.C. 1166	Depending on length of service, may result in his reversion, retirement or separation with or without pay.
Temporary Warrant Officer.	Secretarial action (acting for President)	Termination of appointment	No	10 U.S.C. 5596	Board generally not required, may be under limited circumstances; member reverts to permanent status and may be further processed in such status.
Warrant Officer (W-1)	Sentence of GCM	Dismissal	Yes (DD)	MCM, para 126d	
Warrant Officer (W-1)	Secretarial action (acting for President)	Dropping from rolls	No	10 U.S.C. 6408	Same remarks as for dropping from the rolls of a commissioned officer.
Warrant Officer (W-1)	Secretarial action (acting for President)	Dismissal	No	10 U.S.C. 6408	Must be in time of war.
Midshipmen (USN or other MIDN on active duty).	Sentence of GCM	Dismissal	No	BUPERSMAN 3850100-10 Navy Regs Art 0801-1	Receives ltr from SECNAV vice discharge certificate.
Midshipman USN	Secretarial action	Dismissal	Yes (Hon)(DD 214 only)	10 U.S.C. 6961	Based upon recommendation of Superintendent that MIDN's continued presence is contrary to best interests of Naval Service.

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Appendix A—Methods by which Individuals May Be Involuntarily Separated from the Naval Service (Other Than by Reason of Being Physically Unfit)—Continued

Category	Method	Called	Discharge Certificate/Type	Reference	Remarks
Midshipman USN	Secretarial action	Discharge	Yes (Hon)(DD 214 only)	10 U.S.C. 6962	Based upon recommendation of Superintendent for inaptitude or unsatisfactory conduct. May be required to serve on active duty as enlisted reservist IAW 10 U.S.C. 6959. Whether or not required to serve will depend on circumstances, but generally not called to active duty except in last 2 yrs. If enlisted service required, DD 214 only after completed enlisted service.
Midshipman USN	Academic deficiency	Discharge	Yes (Hon)(Usually only DD 214)	10 U.S.C. 6963	Discharge from USNA and USN unless academic board recommends otherwise. Generally not called to active duty as enlisted. Prior enlisteds with no further service requirements also receive discharge certificate.
Midshipman USNR (and Advanced College Program Students).	CNP or Secretarial action	Disenrollment	Yes (Hon)(DD 214 only)	10 U.S.C. 2107 10 U.S.C. 2105	USNR Midshipmen have an underlying reserve status. Personnel being disenrolled during last two years will be called to active duty and not issued discharge until completion of enlisted service.
Enlisted	Sentence of GCM	Discharge	Yes (DD, BCD)		
Enlisted	Sentence of SPCM	Discharge	Yes (BCD)		
Enlisted	Board action	Discharge	Yes (Hon, Gen, OTH)	BUPERSMAN 3420185	Misconduct.
Enlisted	Board action	Discharge	Yes (Hon, Gen)	BUPERSMAN 3420184	Unsuitability. Board only if more than 8 yrs service.
Enlisted	Command recommendation	Discharge	Yes (Hon, Gen)	BUPERSMAN 3420184	Unsuitability. No board if less than 8 yrs.
Enlisted	CNP action	Discharge	Yes (Hon, Gen)	BUPERSMAN 3850220	Convenience of the Government.
Enlisted (USNR)	Secretarial action	Dropping from rolls	No	10 U.S.C. 1163	Receives ltr from SECNAV vice discharge. This statute applies to all reserves, not just officers. Only requires Secretarial vice Presidential action.
Enlisted	Good of the Service at individual's request	Discharge	Yes (Gen, OTH)	BUPERSMAN 3420270	At individual's request to GCM authority to escape trial by court-martial.

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Appendix A—Methods by which Individuals May Be Involuntarily Separated from the Naval Service (Other Than by Reason of Being Physically Unfit)—Continued

Category	Method	Called	Discharge Certificate/Type	Reference	Remarks
Commissioned Officer (USMC/USMCR).	Sentence of GCM	Dismissal	No	10 U.S.C. 1161(USMC) 10 U.S.C. 1163(USMCR)	Receives ltr from SECNAV vice discharge certificate.
USMC Officer (w/less than 3 yrs).	Board of officers	Revocation of commission	Yes (Hon, Gen, OTH) and letter of revocation signed by SECNAV	10 U.S.C. 6392 SECNAVINST 1920.6	Only applies to USMC officer with less than 3 yrs *as a regular*. No authority to board officer with more than 3 yrs as USMC officer. Very limited exceptions permit revocation without board.
USMCR Officer	Board of officers	Discharge	Yes (Hon, Gen, OTH)	10 U.S.C. 1162 10 U.S.C. 1163 SECNAVINST 1920.6	Very limited exceptions permit discharge without board.
Commissioned Officer	Secretarial action (acting for President without board)	Dropping from rolls	No	10 U.S.C. 1161 (USMC) 10 U.S.C. 1163 (USMCR) SECNAVINST 1920.6	Receives ltr from SECNAV vice discharge certificate. Requires 3 mos UA or civilian conviction and sentence to penitentiary. In case of reservists, only requires Secretarial vice Presidential action.
Permanent Regular Warrant Officer.	Board of officers	Termination of appointment	Yes (Hon, Gen, OTH)	10 U.S.C. 1165 10 U.S.C. 1166 MARCORSEPMAN 5008	Depending on length of service, may result in his reversion, retirement or separation with or without pay.
Temporary Warrant Officer.	Secretarial action (acting for President)	Termination of appointment	No	10 U.S.C. 5596	Board generally not required, may be under limited circumstances; member reverts to permanent status and may be further processed in such status.
Warrant Officer (W-1)	Sentence of GCM	Dismissal	No	MCM, para 126d	Letter of dismissal issued in lieu of discharge certificate.
Warrant Officer (E-1)	Secretarial action (acting for President)	Dropping from rolls	No	10 U.S.C. 6408	Same remarks as for dropping from the rolls of a commissioned officer.
Warrant Officer (W-1)	Secretarial action (acting for President)	Dismissal	No	10 U.S.C. 6408	Must be in time of war.
Enlisted	Sentence of GCM	Discharge	Yes (DD, BCD)	JAGMAN, Ch 1 MARCORSEPMAN 6006 MARCORSEPMAN 6007	
Enlisted	Sentence of SPCM	Discharge	Yes (BCD)	JAGMAN, Ch 1 MARCORSEPMAN 6006	
Enlisted	Board action	Discharge	Yes (Hon, Gen, OTH)	MARCORSEPMAN 6017	Misconduct.
Enlisted	Board action	Discharge	Yes (Hon, Gen)	MARCORSEPMAN 6016 MARCORSEPMAN 6023	Unsuitability; board only if more than 8 yrs service.
Enlisted	Command recommendation	Discharge	Yes (Hon, Gen)	MARCORSEPMAN 6016	Unsuitability; no board if less than 8 yrs.

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Appendix A—METHODS BY WHICH INDIVIDUALS MAY BE INVOLUNTARILY SEPARATED FROM THE NAVAL SERVICE (OTHER THAN BY REASON OF BEING PHYSICALLY UNFIT)—Continued

Category	Method	Called	Discharge Certificate/Type	Reference	Remarks
Enlisted	CMC action	Discharge	Yes (Hon, Gen)	MARCORSEPMAN 6012	Convonience of the Government.
Enlisted (USMCR)	Secretarial action	Dropping from rolls	No	10 U.S.C. 1163	Receives ltr from SECNAV vice discharge. This statute applies to all reserves, not just officers. Only requires Secretarial vice Presidential action.
Enlisted	Secretarial action and board action	Discharge	Yes (Hon, Gen)	MARCORSEPMAN 6024.9	If board recommends retention but discharge authority believes case warrants discharge, case may be forwarded to SECNAV for decision.
Enlisted	Good of the Service at individual's request	Discharge	Yes (Gen, OTH)	MARCORSEPMAN 6021	At individual's request to GCM authority to escape trial by courtmartial.

[44 FR 76486, Dec. 27, 1979]

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ing the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharge under such standards; and

"(B) such determination shall be made by such board, (i) on an expedited basis after notification by the Veterans' Administration to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative within one year after the date of enactment of this paragraph in any case where a general or honorable discharge has been awarded on or prior to the date of enactment of this paragraph under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after such enactment date.

"If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such person shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of his or her right to such appearance. The Administrator shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Veterans' Administration, or the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.".

(b)(1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under revised standards for the review of discharges referred to in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by subsection (a)(2) of this section, of his or her right to obtain an expedited determination under section 3103(e)(2)(B)(i) of such title and of the implications of the provisions of this Act for each such person.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who applies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 3103(a) of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Veterans' Administration only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Administrator of Veterans' Affairs under section 3103 of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans' Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552 and 1553).

Section 2. Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall provide the type of health care and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 3103(a) of such title, but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge.

Section 3. Paragraph (18) of section 101 of Title 38, United States Code, is amended to read as follows:

"(18) The term 'discharge or release' includes, (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable."

Section 4. In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Veterans' Administration determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Administrator of Veterans' Affairs shall, in keeping with the spirit and intent of this Act, not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 3103(e)(2)(A) (i), (ii), or (iii) of

title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans.

Section 5. This Act shall become effective on the date of its enactment, except that—

(1) section 2 shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

(2) the amendments made by section 1(a) shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law

(A) with respect to any person who, on such enactment date is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) of title 38, United States Code, as added by section 1(a)(2) of this Act, until, (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e), (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

(B) with respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A) (i), (ii), or (iii) of such paragraph who has been provided any such benefits prior to such enactment date, the United States shall not make any claim to recover the value of any benefits so provided; and

(C) the amendments made by clause (1) of section 1(a) shall apply, (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act, had not attained general eligibility for such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons.

[44 FR 76509, Dec. 27, 1979]

PART 725—DISPOSITION OF CASES INVOLVING PHYSICAL DISABILITY

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APPENDIX—LIST OF FORMS

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 1216, 5031. Interpret or apply 5 U.S.C. 500, 8301, 10 U.S.C. 266, 270, 1004, 1163, 1201-1215, 1217-1219, 1221, 1372, 1373, 1554, 6011, 6148, 6331, 6485, 26 U.S.C. 104, 37 U.S.C. 601-604, 38 U.S.C. 722.

SOURCE: 36 FR 21968, Nov. 18, 1971, unless otherwise noted.

Subpart A—Background, Purpose and Policy

§ 725.101 Background.

(a) At the beginning of the Civil War, it became evident that both the Army and the Navy would be seriously handicapped by the lack of statutory authority to retire military personnel, who, because of advanced age, disease, or infirmity, were unfit to exercise command in the field or at sea. In 1861, the Congress approved an "Act for the Better Organization of the Military Establishment" (12 Stat. 287-291). This law provided that when an officer had become incapable of performing the duties of his office, either he would be retired from active duty, or be wholly retired by the President. The purpose of this enactment and of subsequent disability retirement legislation was to give the military forces of the Nation a vital and fit membership and to establish an equitable system of retirement and compensation for those eligible members whose military careers must be terminated by reason of illness or injury.

(b) Disability retirement pay and severance pay, provided by 10 U.S.C. chapter 61, are benefits provided for members, who, if otherwise qualified, become unfit to perform duty because of physical disability acquired or aggravated while on active duty or inactive duty training. Such benefits are not provided for members or former members of the armed forces, who, after discharge or release from active duty or inactive duty training, may become unfit to perform their duties because of physical disability, even though the origin of the disability may be related to a period of active duty or inactive duty training. Individuals, who, during active duty, incur disabilities which do not preclude performance of full military duties, may be eligible for compensation under laws administered by the Veterans' Administration, even though they do not qualify for disability retirement or severance pay.

§ 725.102 Purpose.

The purpose of these regulations is to prescribe the administrative procedures and policies to be followed in implementing laws pertaining to discharge or retirement of members from the naval service because of physical disability.

§ 725.103 Policy.

(a) It is the policy of the Department of the Navy that laws pertaining to physical disability retirement or discharge be administered fairly, equitably, and with due regard for the interest of both the individual and the Government. Although these laws should be so administered as to protect the U.S. Government from assuming unwarranted responsibility for payment of disability and retirement benefits, reasonable doubt as to the entitlement of a member to such benefits will be resolved in favor of the individual.

(b) However, the fact that a member is determined to be unfit for duty while on active duty may not be sufficient to entitle him to disability retirement or severance pay. There must be a determination that this unfitness is due to a disability incurred or aggravated while entitled to receive basic pay. The fact that such member was accepted physically for active duty is not conclusive that the disability was incurred after such acceptance. It is one piece of evidence to be considered with all of the medical evidence. In addition to, and in conjunction with, all other pertinent medical evidence, due consideration and weight must be given to accepted medical principles, authenticated by medical authorities, in arriving at a final determination. It is not proper to exclude such accepted medical principles in making the aforesaid determination, even in cases where there is no other evidence that the disability existed prior to entrance upon active duty.

Subpart B—Explanation of Terms

§ 725.201 Abbreviations.

(a) ONDE—Office of Naval Disability Evaluation.

(b) PRC—Physical Review Council.

(c) PEB—Physical Evaluation Board.

(d) DES—Disability Evaluation System.

(e) DESC—Disability Evaluation System Counselor.

(f) NPDRB—Naval Physical Disability Review Board.

(g) EPTE—Existed Prior to Entry (Enlistment).

(h) VASRD—Veterans Administration Schedule for Rating Disabilities.

§ 725.202 Accepted medical principles.

(a) These principles are fundamental deductions, consistent with medical facts, and based upon the observation of a large number of cases. To constitute accepted medical principles, the deductions must be so reasonable and logical as to create a virtual certainty that they are correct.

(b) In accordance with these principles existence of a disease or injury prior to entrance into service may be presumed, and no further additional confirmation is needed. For example, notation or discovery during service of residual conditions such as scars, fibrosis of the lungs, atrophy following disease of the central or peripheral nervous system, healed fractures, absent, displaced, or resected parts or organs, supernumerary parts, or congenital malformations with no evidence of the pertinent antecedent active disease or injury during service, can be considered as established facts which are so convincing as to impel the conclusion that the residual condition existed prior to entrance into active service in the absence of further proof. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close to that date that the disease could not have originated in so short a period, impels the conclusion that the disease existed prior to entrance into active service in the absence of further proof.

§ 725.203 Active duty.

Full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. 10 U.S.C. 101(22).

§ 725.204 Active duty for a period of more than 30 days.

Active duty under a call or order that does not specify a period of 30 days or less. 10 U.S.C. 101(23).

§ 725.205 Active service.

Service on active duty. 10 U.S.C. 101(24). For the purposes of determinations under 10 U.S.C. chapter 61, periods of active service shall be computed under 10 U.S.C. 1208.

§ 725.206 Aggravation by service.

(a) Disease or injury noted prior to service, which clearly had its inception prior to service, will be considered to have been aggravated, when such disability underwent an increase in severity during the service, unless such increase in severity is clearly shown to have been due to the natural progress of the disease (see § 725.231).

(b) In the case of members with more than 3 years of continuous active duty, any increase in the severity of a preexisting disease or injury will be considered as service aggravation, provided that such increase in severity was not due to the member's intentional misconduct or willful neglect or was not incurred during a period of unauthorized absence.

(c) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other condition incurred before entry into service, including postoperative scars and absent or poorly functioning parts or organs, do not constitute aggravation, unless the treatment was required to relieve disability which had been aggravated by service.

§ 725.207 Areas of responsibility.

As used in this Manual, the terms "area of responsibility" and "technical speciality," unless otherwise defined, shall be construed to refer to the duties and responsibilities of the cognizant bureau, office, or headquarters, as set forth in Navy Regulations.

§ 725.208 Convalescent ratings.

Under certain diagnostic codes, the Veterans' Administration Schedule for Rating Disabilities provides for convalescent ratings to be awarded for specified periods of time without regard to the actual degree of impairment of function. Such ratings do not apply to the military departments since the purpose of convalescent ratings is accomplished by other means under disability laws. Convalescence will ordinarily have been completed by the time optimum hospital improvement (for disposition purposes) has been attained. The ratings for observation periods, as distinguished from convalescence, such as those "for one year" following treatment for malignant neoplasm, is not affected by this paragraph.

§ 725.209 DESC.

Experienced, mature officer, senior enlisted member (E-7 or above), or civilian employee at the hospital level, designated to perform the duties of counseling members who are undergoing physical disability evaluation, providing them with authoritative and timely answers to their questions and aiding them in understanding their rights and entitlements. The DESC must be fully informed as to the working of the Disability Evaluation System, rights of party, monetary considerations, and privileges.

§ 725.210 Grade.

A step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation. 10 U.S.C. 101(18).

§ 725.211 Impairment, functional.

Any lessening or weakening of the capacity of the body or any of its parts to perform that which is considered by accepted medical principles to be the normal activity in the bodily economy.

§ 725.212 Impairment, latent, functional.

Impairment which is not manifested by current signs and/or symptoms, but which is of such a nature and there is reasonable certainty, according to accepted medical principles, that signs and/or symptoms will appear within a reasonable period of time.

§ 725.213 Impairment, manifest, functional.

That which is evidenced by signs and/or symptoms.

§ 725.214 Inactive duty training.

(a) Duty prescribed for Reserves by the Secretary concerned under 37 U.S.C. 206 and any other provisions of law; or

(b) Special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. It includes those duties when performed by Reserves in their status as members of the National Guard. 10 U.S.C. 101(31).

(c) Inactive duty training does not include work or study performed in connection with correspondence courses.

§ 725.215 Inception of disease or injury.

(a) Determinations concerning the inception of disease or injury, not noted upon entry, should not be based on medical judgment alone, as distinguished from accepted medical principles, or on history alone, without regard to clinical factors pertinent to the basic character, origin, and development of such disease or injury. This determination should be based on a thorough analysis of the entire evidentiary showing in the individual case and a careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of such disease or injury. History conforming to accepted medical principles pertaining to such disease or injury should be given due consideration, in conjunction with basic clinical data concerning the manifestation, development, and nature of such disease or injury, and accorded probative value consistent with accepted medical principles in relation to other competent evidence in each case. All material evidence relating to the incurrence, symptoms, and course of the disease or injury, including official and other records made prior to and during service, together with all other evidence concerning the inception, development, and manifestations of such disease or injury, should be taken into full account.

(b) Conditions of infectious origin are to be considered with regard to the circumstances of infection and the incubation period. Manifestations of disease within less than the minimum incubation period after entry into active service will be accepted as proof of inception prior to service.

(c) In neuropsychiatric conditions, situational reactions characteristic of a life pattern, indicating psychopathic personality, chronic psychoneurosis of long standing, or other neuropsychiatric symptoms shown to have existed prior to service, with manifestations during service, which are the basis of the diagnosis in service, may be considered in determining whether preexisting neuropsychiatric conditions exist. When the conclusion that the mental disorder of a psychotic member existed prior to service is based upon a past history of aberrant behavior related by the member, it is essential that the record show that the member had the capacity to recollect and narrate in a trustworthy manner and that the past history is reliable, rather than a manifestation of his illness. When the ability of the member to recollect and narrate in a trustworthy manner is in doubt, there must be corroborative evidence.

§ 725.216 Incurred while entitled to receive basic pay.

(a) "Incurred" refers to the date or time when a disease or injury is contracted or suffered, as distinguished from a later date, when it is determined that, because of such disease or injury, a member has become unfit to perform his duties. Physical disability due to natural progression of disease or injury is "incurred" at the time the disease or injury causing the disability is contracted. Increase in physical disability during service in excess of that due to natural progression of the disease or injury is due to aggravation by service and, as such, is "incurred" when the disease or injury is aggravated (see § 725.206).

(b) "While entitled to receive basic pay" encompasses all types of duty which entitled the member concerned to receive active duty pay (as well as any duty without pay, which may be counted the same as like duty with pay). This definition shall not be construed to entitle any member not on active duty, who, at the time of his separation from active duty, was considered physically fit for duty, to bene-

fits under 10 U.S.C. chapter 61, because of an increase in disability occurring while the party is not entitled to receive basic pay.

§ 725.217 Legal representative.

A trustee, guardian, or committee, appointed by competent authority for a mentally incompetent member. In cases where a legal representative has not been so appointed, the "legal representative," as used in this Manual, shall be the person who, by reason of his or her relationship to the member, is most likely to act in the best interests of a mentally incompetent member. Normally this will be the member's next of kin or other relative specified by law or regulation. In cases of doubt, such as when the member's wife is separated from the member, advice as to who is to be treated as the member's legal representative for the purposes of proceedings under this Manual (until a trustee, guardian, or committee has been formally designated) will be requested from the Judge Advocate General (Director, Fiduciary Affairs Division).

§ 725.218 Line of duty.

(a) General rule. Disease or injury incurred by naval personnel while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

(1) As the result of the person's misconduct,

(2) While avoiding duty by deserting the service,

(3) While absent without leave and such absence materially interfered with the performance of required military duties (see § 725.241),

(4) While confined under sentence of a court-martial which included an unremitted dishonorable discharge, or

(5) While confined under sentence of a civil court following conviction for an offense which is defined as a felony by the law of the jurisdiction where convicted.

(b) "Active service" as used in this paragraph includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

(c) Presumption. It is presumed that a disease or injury suffered by a member of the naval service was incurred in line of duty. Clear and convincing evidence is required to overcome this presumption.

§ 725.219 Maximum hospital benefits.

That point during hospitalization when a patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not contribute to any further substantial recovery. A patient who can be expected to continue to improve over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefits.

§ 725.220 Member.

Unless otherwise defined, a "member" includes a commissioned officer, commissioned warrant officer, warrant officer, aviation cadet, or enlisted person, including a retired person of the naval service. The words "retired person" include members of the Fleet Reserve and Fleet Marine Corps Reserve who are in receipt of retainer pay. Midshipmen of the Navy are not members. The term "member" is also used interchangeably with the term "party" to denote the individual whose case is being considered.

§ 725.221 Member, enlisted.

A person serving in an enlisted grade. 10 U.S.C. 5001(a)(4).

§ 725.222 Mental incompetency.

For the purposes of this Manual, the term "mental incompetency" is used to designate the condition or legal status of a party who is unable or unfitted to manage his own affairs because of a mental disorder (see 37 U.S.C. chapter 11 and JAG Manual, chapter 15). Determinations of mental competence are made by a medical board under Chapter 3 of this Manual.

§ 725.223 Misconduct.

(a) *Intentional misconduct or willful neglect.* "Intentional misconduct" and "willful neglect," as used in 10 U.S.C.

chapter 61, are descriptive of "misconduct" as defined herein.

(b) *Generally misconduct is wrongful conduct.* Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support an opinion of misconduct it must be established by clear and convincing evidence that the disease or injury was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the consequences. If a resulting disease or injury is such that it could have been reasonably foreseen from the course of conduct, it is said to be a "proximate result."

(c) *Presumption.* It is presumed that disease or injury suffered by a member of the naval service is not the result of his own misconduct. Clear and convincing evidence is required to overcome this presumption.

(d) *Examples.* If an individual intentionally wounds himself with a firearm, the injury is due to his own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby wounds himself, that too would be an injury due to his own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries would not be due to his own misconduct because they would not have been a reasonably foreseeable result (proximate result) of the wrongful conduct in which the individual was engaged. If this latter example, the injuries are said to be the result of an independent intervening cause. The fact that the conduct violates a law, regulation, or order, or the fact that the conduct is engaged in while the individual is intoxicated does not, of itself, constitute a basis for a determination of misconduct. Such circumstances should, however, be considered along with all other facts and circumstances in determining whether the conduct of the individual was grossly negligent and whether the disease or injury was reasonably foreseeable as a probable result of such conduct.

(e) *Medical and dental treatment*—(1) *Refusal of treatment.* If a member unreasonably refuses to submit to medical, surgical, or dental treatment, any disability that proximately results from such refusal shall be deemed to have been incurred as the result of the member's own misconduct. Refer to the ManMed, art. 18-12(2)(c).

(2) *Venereal disease.* Any disability resulting from venereal disease shall not support a misconduct finding if the member has complied with regulations requiring him to report and receive treatment for such disease. Refer to the ManMed, art. 22-18.

(f) *Intoxication and drug abuse*—(1) *Intoxication.* An injury incurred as the proximate result of prior and specific voluntary intoxication is incurred as the result of misconduct. In order for intoxication alone to be the basis for a determination of misconduct respecting a related injury, there must be clear showing that the member's physical or mental faculties were impaired due to intoxication at the time of the injury, the extent of the impairment, and that the impairment was a proximate cause of the injury. Intoxication (impairment) may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor (see Article 1270, U.S. Navy Regulations).

(2) *Alcohol and drug-induced disease.* Inability to perform duty resulting from disease which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor or habit-forming drugs is the result of misconduct. Habituation may or may not be associated with a specific inability to perform duty which is directly due to the specific and proximate use of alcohol or drugs (see Article 1270, U.S. Navy Regulations).

(g) *Mental responsibility*—(1) *General rule.* A member may not be held responsible for his acts and their foreseeable consequences if, as the result of mental defect, disease or derangement, he was unable to comprehend the nature of such acts or to control his actions. Additionally, a member may not be held responsible for his acts or their foreseeable consequences

if, as the result of a mental condition not amounting to a defect, disease or derangement and not itself the result of prior misconduct, he was unable to comprehend the nature of such acts and to control his actions. Thus, an injury which was the proximate result of acts performed while the member injured was suffering impairment of his mental faculties as the result of voluntary ingestion of a hallucinogenic drug would be deemed to have been incurred as a result of the member's own misconduct. Certain properties of such drugs are notorious and their use is prohibited by Article 1270, U.S. Navy Regulations; hence the impairment would support a finding of misconduct.

(2) *Presumption.* In the absence of evidence to the contrary, there is a presumption that all persons are mentally responsible for their acts. This presumption makes it unnecessary in the majority of cases that an administrative fact-finding body seek evidence that a member was mentally responsible at a certain time unless credible evidence is developed or discovered tending to indicate that he was not mentally responsible at that time. Such evidence may consist of circumstances attending certain acts, evidence of previous abnormal, irrational or aberrant behavior, expert opinion evidence of mental illness, and other evidence directly or indirectly tending to indicate lack of mental responsibility. Clear and convincing evidence is required to overcome this presumption.

(3) *Suicide attempts.* In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, is considered to create a strong inference of lack of mental responsibility. In cases of bona fide suicide attempts, therefore, further evidence must be sought on the question of mental responsibility, including, where warranted, expert psychiatric evaluation. If there is no reasonable and adequate motive for suicide supplied by the evidence, the suicide attempt will be sufficient to rebut the presumption of mental responsibility and the determination of whether the attempt was misconduct must then necessarily rest on the evidence.

(4) *Intentional self-inflicted injury.* An intentional self-inflicted injury not prompted by a serious suicidal intent is at most a suicidal gesture and such injury, unless lack of mental responsibility is otherwise shown, is deemed to be incurred as the result of the member's own misconduct.

§ 725.224 Officer.

A member of the naval service in a commissioned or warrant officer grade. 10 U.S.C. 5001(a) (5).

§ 725.225 Officer, commissioned.

A member of the naval service serving in a grade of above warrant officer, W-1. 10 U.S.C. 5001(a) (6).

§ 725.226 Officer, warrant.

A member of the naval service serving in a warrant officer grade. 10 U.S.C. 5001(a)(7).

§ 725.227 Optimum hospital improvement.

The point during hospitalization when the patient's medical fitness for further active service can be determined, and it is considered probable that further treatment for a reasonable period in a military hospital will not result in material change in the patient's condition which would later his ultimate type of disposition or amount of separation benefits.

§ 725.228 Physical disability.

Any manifest or latent impairment of function due to disease or injury, regardless of the degree, which reduces or precludes an individual's actual or presumed ability to engage in gainful or normal activity. The term "physical disability" includes mental disease, but not such inherent defects as behavior disorders, personality disorders, and primary mental deficiency, although they may make a member unfit for military duty.

§ 725.229 Physical disability, unfit because of.

(a) A member is "unfit because of physical disability" when he is unable, because of disease or injury, to perform the duties of his office, grade, rank, or rating in such a manner as to

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reasonably fulfill the purpose of his employment on active duty.

(b) The mere presence of physical disability does not, in itself, require a finding of unfitness. In each case considered, it is necessary to correlate the nature and degree of functional impairment produced by physical disability with the requirements of the duties to which the member may reasonably expect to be assigned by virtue of his office, grade, rank, or rating (excluding special hazardous duty, such as duty involving flying, etc., but giving due consideration to the requirements of other potential sea or combat assignments).

(c) A member who has either a manifest or latent impairment which is likely to render him unfit because of physical disability in the near future will be considered to be unfit for duty, even though he may be physically capable of performing all of his duties at the moment. Conversely, a member convalescing from an illness or an injury, and who is likely to recover to a degree which would permit him to perform all of his duties in the near future, will be considered to be fit for duty.

(d) In determining whether a member is unfit because of physical disability, consideration will be given only to evidence which is relevant to the issues set forth in paragraphs (a), (b), and (c) of this section. Specifically, it is that which relates to either the nature and degree of functional impairment currently suffered because of physical disability; the requirements of the duties to which the member might reasonably expect to be assigned; the physical ability of the member to perform the requirements of the duties to which he may be assigned; or the weight to be accorded to other evidence related to the foregoing issues. Among the factors which shall not be considered and which have no bearing on this determination are the following: The ability or inability of the member to meet physical standards for hazardous duty, or enlistment, or appointment, or transfer to a different component within the naval service, or for transfer to a different category within the naval service; the need of the service for special skills possessed by the member; the fact that disciplinary action (civil or military) is pending against the member; or the fact that the active service of the member may soon be terminated for reasons other than physical disability.

§ 725.230 Physical disability, permanent, nature of.

(a) A disability will be considered as permanent, if, based upon accepted medical principles, the defect has stabilized to the extent that the compensable percentage rating will, with reasonable expectation, remain unchanged during the ensuing 5-year statutory period; or if the compensable percentage rating is 80 percent or more and there is reasonable expectation that it will not reduce below 80 percent during the 5-year statutory period.

(b) A disability will be considered as "may be permanent" if, based upon accepted medical principles, the defect is of such a nature that accurate assessment cannot be made of its permanent degree of severity or percentage rating.

§ 725.231 Presumptions.

A presumption (an inference of the truth of any proposition or fact) is reached through a process of reasoning wherein one looks to probabilities rather than certainties. It is a rule of law, which when assumed, constitutes prima facie evidence as to the issue involved. In the absence of evidence to the contrary the presumption will be accepted as a fact. When weighed with evidence and circumstances to the contrary, the presumption will be given its logical probative value. A preponderance of the evidence is required to overcome presumptions except when otherwise provided in this Manual. For example, §§ 725.218 and 725.223 require clear and convincing evidence to rebut certain presumptions, and if, after consideration of all available evidence, a reasonable doubt exists concerning the incurrence, aggravation, or extent of a member's condition, that doubt will be resolved in favor of the member. A preponderance of the evidence exists where there is a superior-

ity in the weight of the evidence, not necessarily in quantity but in effect.

(a) Every person employed in active service shall be presumed to have been in sound condition when examined, accepted, and enrolled for service, except as to physical disabilities noted at time of the examination, acceptance, and enrollment, or where medical evidence or principles demonstrate that the disease or injury existed prior to acceptance and enrollment. Only those physical disabilities recorded at the time of the examination are to be considered as noted. A mere history of the preservice existence of a physical disability, recorded at the time of the examination for acceptance, does not constitute a notation, but will be considered, together with all other material evidence, in determinations as to the incurrence of such physical disability.

(b) It is further presumed that any additional disability resulting from the preexisting injury or disease was caused by military service aggravation. Only specific findings of "natural progress" of the preexisting injury or disease based upon well-established medical principles, as distinguished from medical opinion alone, are sufficient to overcome the presumption of military service aggravation.

(c) Acute infections, such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, acute ear disease; and sudden developments, like hemoptysis, lung collapse, perforating ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage, occurring while in military service, will be presumed as incurred in line of duty or service-aggravated unless there was no permanent increase in disability resulting therefrom during active military service.

§ 725.232 Proximate result.

A disease or injury, or aggravation thereof, resulting in physical disability, which, after consideration of all the facts and circumstances of a particular case, may reasonably be regarded as arising out of service or may reasonably be assumed to be the effect of service, will be considered the proximate result of the performance of active duty or inactive duty training, as the case may be.

§ 725.233 Pyramiding.

Pyramiding is the term used to describe the application of more than one rating to any area or system of the body when the total functional impairment of that area or system is adequately reflected under a single appropriate code. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent and special rules for their evaluation are included in appropriate sections of the VASRD. Related diagnoses should be merged for rating purposes when the VASRD provides a single code covering all their manifestations. This prevents pyramiding and reduces the chance of overrating. For example, disability from fracture of a tibia with malunion, limitation of dorsiflexion, eversion, inversion, and traumatic arthritis of the ankle would be evaluated under one VA Code 5262, in accordance with the effect upon ankle function, with no separate evaluation for limitation of motion or traumatic arthritis.

§ 725.234 Rank.

The order of precedence among members of the armed forces. 10 U.S.C. 101(19)

§ 725.235 Rating.

The name (such as Boatswain's Mate) prescribed for enlisted members of the naval service in an occupational field. 10 U.S.C. 101(20)

§ 725.236 Reasonable doubt.

By "reasonable doubt," is meant a doubt which exists because of the fact that the evidence does not satisfactorily prove or disprove the claim, yet there does exist a substantial doubt, not specious, and one within the range of probability, as distinguished from pure speculation or remote possibility.

§ 725.237 Recommendations considered substantially detrimental.

Recommendations, if approved, which would have any of the following consequences, shall be considered as

substantially or materially detrimental to interests of the member:

(a) Would retire the member permanently for physical disability in lieu of being placed on the TDRL;

(b) Would separate the member for physical disability, with or without severance pay, in lieu of temporary or permanent retirement for physical disability;

(c) Would separate the member for physical disability without severance pay, in lieu of separation for physical disability with severance pay;

(d) Would decrease (below 80 percent) the percentage of disability at which the member will be temporarily or permanently retired for physical disability;

(e) Would change a recommendation of "fit for duty" or its equivalent under §§ 725.519-725.525 to a recommendation of "unfit for duty" or its equivalent under §§ 725.519-725.525, unless member or his counsel specifically requested a finding of "unfit for duty";

(f) Would change a recommendation of "unfit for duty" or its equivalent under §§ 725.519-725.525 to a recommendation of "fit for duty" or its equivalent under §§ 725.519-725.525, unless member or his counsel specifically requested a finding of "fit for duty";

(g) Would retire the member temporarily in lieu of permanently;

(h) Would add an EPTE rating or revise an assigned EPTE rating which may affect ultimate benefits;

(i) Would add a diagnosis of a psychiatric nature not mentioned in the medical board report referring member's case to a physical evaluation board.

§ 725.238 Reserve component.

Either the U.S. Naval Reserve or the U.S. Marine Corps Reserve.

§ 725.239 Secretary.

Unless otherwise qualified, refers to the Secretary of the Navy. 10 U.S.C. 101(8)

§ 725.240 Total disability ratings.

Total disability will be considered to exist when the member's impairment is sufficient to render its impossible for the average person to follow a substantially gainful occupation. Accordingly, in cases in which the VASRD does not provide a 100 percent rating, under the appropriate (or analogous) VA Code, a member may be assigned a disability rating of 100 percent, if his impairment is sufficient to render it impossible for him to follow a substantially gainful occupation.

§ 725.241 Unauthorized absence.

Any absence from duty without authority, such as contemplated under articles 85, 86, and 87 of the Uniform Code of Military Justice (10 U.S.C. chapter 47) or such as was contemplated by the provisions of the Articles for the Government of the Navy, which were in effect prior to 1951. When a disability is incurred at any time during a period of unauthorized absence, regardless of whether the absence interfered with the members' military duties, the member is excluded from receiving benefits under 10 U.S.C. chapter 61.

Subpart C—Medical Boards

SOURCE: 39 FR 18438, May 28, 1974, unless otherwise noted.

NOTE: In the revision of Subpart C, § 725.300 (36 FR 21968, Nov. 18, 1971) was retained without change.

§ 725.300 Full instructions concerning Medical Boards.

Chapter 18, section III, Manual of the Medical Department, U.S. Navy, contains full instructions concerning the Medical Boards. The sections in this subpart contain information applicable to Medical Boards as they pertain to the Disability Evaluation System.

[36 FR 21968, Nov. 18, 1971]

§ 725.301 Convening authority.

(a) A Medical Board may be convened by the commander of a fleet, force, squadron, or flotilla, by commanding generals of Fleet Marine Force units, or by the commandant, commander or commanding officer of a shore (field) activity of the Department of the Navy, upon any member of the Armed Forces under his com-

mand, on the recommendation of the medical officer of the command to which such person is attached. A Medical Board may also be convened by the Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Personnel, or the Chief, Bureau of Medicine and Surgery.

(b) Individual cases shall be referred to the Board, in such manner as the convening authority directs.

§ 725.302 Composition.

(a) Medical Boards will be composed of two Medical Corps officers of the Armed Forces or Public Health Service. A third member may be assigned at the discretion of the convening authority.

(b) One of the Medical Board members shall be a senior officer with detailed knowledge of the directives pertaining to standards of medical fitness and unfitness, disposition of patients, and disability separation procedures. Whenever possible, the Medical Board shall be composed of the Chief of Service (or his designated representative) and the medical or dental officer responsible for the patient's care. Other medical or dental officers may be assigned as the convening authority directs.

(c) When a member of the medical board does not have training in the specialty of the patient's primary impairment, appropriate specialty consultations shall be obtained prior to consideration of the case by the medical board.

(d) When the party before the board is a reservist, the membership of the board shall include Reserve representation. In any instance where Reserve members are not available, the convening authority shall so indicate in his forwarding endorsement.

(e) In cases involving questions of mental competency, the membership of the board shall include a psychiatrist.

§ 725.303 Purpose.

The medical board serves to report upon the present state of health of any member of the Armed Forces and as an administrative board by which the convening authority or higher authority obtains a considered clinical opinion regarding physical fitness of service personnel.

§ 725.304 Necessity for accurate medical evaluation.

(a) Although medical and dental officers do not determine physical unfitness for service, they should be familiar with the basic policies and concepts to be able to carry out the responsibility for identifying members whose physical fitness for full duty may be in doubt. There is no provision or authority for waiving a defect that would interfere with a member's ability to reasonably perform his duties. It is not possible to list and define all the medical factors that may compromise a member's ability to reasonably perform his duties; however, SECNA VINST 1830.3B provides certain guidelines on conditions which normally render an individual unfit because of physical disability and should be referred to in questionable cases. On the other hand, there is no substitute for competent and mature military medical judgment in appraising all the relevant factors in a given case.

(b) The mere presence of a physical defect does not in itself automatically require or justify referring a case to a PEB. The test must always be whether the defect interferes with the member's reasonable performance of his assigned duties. Initial enlistment and commissioning physical standards must not be confused with physical capability to perform duty. Once he is enlisted or commissioned, the fact that a member may later fall below initial entry standards does not require that his case be referred to a PEB. Similarly, there are prescribed minimum physical standards for special duties such as flying. Disqualification for special duties does not necessarily imply physical unfitness unless the disqualifying defect would also interfere with performance of other duties. Medical board evaluation is appropriate only in instances where the member's ability to reasonably perform military service is in doubt.

(c) Information contained in medical boards may play an important role in determining the rights of an individu-

al to certain benefits (such as pensions, compensation, promotion, retirement, income tax exemptions, etc.). It is, therefore, essential to include in the report all available information with adequate documentation concerning the origin, nature, aggravation by service, and other significant facts concerning all the member's conditions which unfit the member and those which do not.

§ 725.305 Board procedure.

(a) The board shall consider and report upon the case of a member who is referred to it by competent authority. It shall require and examine such records in the case as are necessary to formulate a considered conclusion regarding the member's present state of health and the recommendations required. The board's report and recommendations shall be discussed with the member provided it is considered by competent medical authority that such discussion will not adversely affect his health.

(b) Unless it is considered that the information contained in the board's report might have an adverse affect on the member's physical or mental health.

(1) The member shall be allowed to read the board's report or be furnished a copy thereof;

(2) Significant findings and opinions and recommended disposition shall be brought to the member's attention;

(3) He shall be afforded an opportunity to submit a statement in rebuttal to any portion of the board's report. If a member submits a statement in rebuttal, the board shall review same and make any change which is considered appropriate or prepare a statement in surrebuttal.

(c) The NAVMED Form 6100/2 statement concerning the findings and recommendations of the board shall be completed, referred to the member for signature, and witnessed. This form and statement in rebuttal, if applicable, shall accompany the board's report but shall not be incorporated into it.

§ 725.306 Board preparation.

(a) The medical board report shall be submitted to the convening authority on NAVMED Form 6100/1 (Medical Board Report Cover Sheet). The SF 502 (Narrative Summary) may be used for the body of the board's report provided the SF 502 includes all pertinent data concerning the case; otherwise, the body of the report shall be prepared on plain white bond paper.

(1) The cover sheet shall be completed in accordance with the guidelines set forth in article 18-24, ManMed.

(2) The body of the report shall present, in narrative form, all pertinent data concerning each complaint, symptom, disease, injury or disability presented by the member which causes or is alleged to cause impairment of health. The facts should be presented briefly and concisely. Emphasis must be placed on the detailed recording of each physical disability in such a manner that subsequent evaluation by adjudicative bodies can be made on the basis of the records.

(3) The narrative section of the board's report should be no more and certainly no less than a well written narrative summary and should answer the following questions:

(i) Why did the patient enter the hospital?

(ii) What physical findings (negative and positive) were found?

(iii) What were the results of pertinent laboratory and X-ray tests?

(iv) What medical or surgical treatment was rendered?

(v) What is the current physical condition of the patient at the time the medical board is written?

(vi) What is the prognosis and recommendation of the board concerning the disposition to be effected in the case?

(vii) What instructions were given to the patient, such as medication to be taken, physical restrictions, etc.?

(viii) Have all conditions and abnormalities been recorded?

(b) Since the medical board is considered the heart of the naval disability evaluation system, incomplete, inaccurate, misleading, or delayed reports may result in an injustice to the member or the Government. The history of his illness; objective findings on examinations; results of X-ray and laboratory tests; reports of consultations; and subjective conclusions with

the reasons therefor, are pertinent evidence to support findings and recommendations. The mere presence of a physical disability does not necessarily render the member unfit for duty. The board's report shall clearly reflect the member's functional impairment, if any.

(1) Apparent contradictions in the records, such as disagreement with a report or consultation, should be thoroughly explained. The condition of a patient following therapy, his response thereto, the degree of severity of his disease or injury, and, when appropriate, their effect on his functional ability must be described in detail.

(c) If a previous medical board has been prepared, it is not necessary to repeat the detailed information contained therein pertaining to past history. In such cases, attention may be invited to the previous report and the description of the present illness restricted to the interval history and currently pertinent data.

(d) Any facts which are not a matter of record or of personal knowledge to a member of the board, but which are based on the member's own statement, should be recorded as "according to the member's own statement." Medical-social reports must be held in the strictest confidence, should not be shown to the member, and information derived therefrom shall not be entered in the board's report. Such data are obtained primarily for the benefit of the patient in diagnosis and treatment, and may be utilized for the purpose of further interrogation of the patient if pertinent. Any additional history so obtained from the patient or from other sources contacted as a result of "lead information" may be incorporated as a part of the history of the case.

(e) In the following instances, the board's report shall contain a statement concerning the member's capability to manage his own affairs:

(1) All psychoses.

(2) Organic brain disorders when the board's report indicates impairment of judgment.

(3) Psychoneuroses, severe, where possible impairment of judgment is indicated.

(4) Any case in which a member has previously been declared incapable of managing his own affairs.

(5) All psychiatric cases of sufficient severity to require further hospitalization.

(f) Except where considered necessary, the information reported on the cover sheet need not be repeated in the body of the board's report.

§ 725.307 Patients who refuse medical, dental, or surgical treatment.

(a) When a member refuses to submit to recommended therapeutic measures for a remedial defect or condition which has interfered with his performance of duty and following prescribed therapy the member is expected to be fit for full duty, the following procedures shall apply:

(1) After being counseled concerning the matter, any member of the naval service who refuses to submit to recommended medical, surgical, dental or diagnostic measures, other than routine treatment for minor or temporary disabilities, shall be transferred to a naval hospital for further evaluation and appearance before a medical board. (See article 3-14, ManMed, concerning compulsory medical or surgical treatment.)

(2) The board shall study the case, inquire into the merits of the individual's refusal to submit to treatment, and report the facts with appropriate recommendations.

(b) In surgical cases, the board's report shall contain answers to the following questions:

(1) Is surgical treatment required to relieve the incapacity and restore the individual to a duty status, and may it be expected to do so?

(2) Is the proposed surgery an established procedure that qualified and experienced surgeons ordinarily would recommend and undertake?

(3) Considering the risks ordinarily associated with surgical treatment, the patient's age and general physical condition, and his reasons for refusing treatment, is the refusal reasonable or unreasonable? (Fear of surgery or religious scruples may be considered, along with all the other evidence, for

whatever weight may appear appropriate.)

(c) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Cases of major surgical operations may be reasonable or unreasonable, according to the circumstances. The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks, should all be taken into consideration.

(d) As a matter of policy, surgery shall not be performed on a person over his protest if he is mentally competent.

(e) In medical, dental or diagnostic cases, the board should show the need and risk of the recommended procedure.

(f) If a medical board decides that a diagnostic, medical, dental or surgical procedure is indicated, these findings must be made known to the patient. The board's report shall show that the patient was afforded an opportunity to submit a written statement explaining the grounds for his refusal, and any statement submitted shall be forwarded with the board's report. The patient should be advised that even if his disability originally arose in line of duty, its continuance would be attributable to his unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member's separation without benefits.

(g) The patient should be advised that section 1207 of Title 10, U.S. Code, precludes disposition of his case under Chapter 61 of Title 10, U.S. Code, if his disability is due to intentional misconduct or willful neglect, or if it was incurred during a period of unauthorized absence. He should be further advised that benefits from the Veterans' Administration will be dependent upon a finding that his disability is in line of duty and is not due to his own willful misconduct. He should be further advised that the Social Security Act contains special provisions relating to benefits for "disabled" persons, and certain provisions relating to persons disabled "in line of duty" during service in the Armed Forces. In many instances persons deemed to have "remediable" disorders have been held not "disabled" within the meaning of that term as used in the statute, and Federal courts have upheld that interpretation. One who is deemed unreasonably to have refused to undergo available surgical procedures may be deemed both "not disabled" and "not in the line of duty."

(h) The board's report will be forwarded direct to the Central PEB except in those cases where the convening authority desires that the case be referred for Departmental review.

§ 725.308 Disposition of report.

The report of the medical board shall be signed by all the members of the board and transmitted to the convening authority.

§ 725.309 Action by convening authority.

(a) When the indicated disposition is appearance before a physical evaluation board and the convening authority of the medical board concurs and is the Commanding Officer of a naval hospital or U.S. Naval Hospital, the Commanding Officer of the Naval Submarine Medical Center, or the Commandant of the Fourteenth Naval District, he shall endorse and forward an original and two copies of the medical board report and other required documents to the Central PEB located in the Office of Naval Disability Evaluation, Washington, D.C. 20390. In this connection, a copy of the member's current Health Record, injury report or investigative report (when appropriate), and the following clinical record documents shall accompany the medical board report—a copy (photostatic, quickcopy, typed, etc.) of the history, physical examination, doctor's progress notes, all laboratory, X-ray, and operative reports, copies of previous medical board reports relating to the condition for which the member is presently being reported on, and all consultations. Colored photographs (2 x 2 color slides are acceptable) should be provided in those cases involving scarring with disfigurement, pigmentation, or in cases of unusual deformities such as ankylosis of indi-

vidual fingers. In addition, a copy of the request for a statement of service shall be attached (see § 725.313). Orders shall not be issued for personal appearance before a PEB until, and unless, the ONDE (Central PEB) advises the appropriate authority that the member has requested personal appearance before the PEB. Also, orders for personal appearance shall not be issued in the case of mentally incompetent members.

(b) When the convening authority of the medical board is other than the above and referral to a PEB is the recommended disposition, the medical board report shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, for appropriate action.

(c) When the recommended disposition is appearance before a PEB and the convening authority of the medical board does not concur, the convening authority shall advise the member concerned of his nonconcurrence and afford the member an opportunity to submit a statement in rebuttal. The convening authority shall then forward the medical board report, the member's signed statement, and a full statement setting forth his reasons for nonconcurrence to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, via the Chief, Bureau of Medicine and Surgery, for determination as to disposition to be effected.

(d) Orders for a personal appearance before a PEB empowered to conduct a formal hearing shall be issued by the authority which referred a case to the Disability Evaluation System upon notification from the Director, ONDE, that such appearance has been requested by the party or that a formal hearing is in the best interest of the party and the Government. Personnel who are in a patient status shall be transferred from hospital to hospital for personal appearance before a PEB in accordance with U.S. Navy Travel Instructions. Transportation through facilities of the Medical Air Evacuation System shall be utilized to the fullest extent possible.

(e) If further hospitalization is indicated, the member shall be retained on the sicklist until recommended findings have been made by the Central PEB. If further hospitalization is not indicated, the member may be discharged from the sicklist and transferred to a nearby appropriate administrative command to await counseling. The member shall not be sent home awaiting orders, granted other than emergency leave, or transferred to another activity until the recommended findings of the Central PEB have been received and accepted by the member. In those cases where the member has been discharged from the sicklist and does not accept the recommended findings of the Central PEB, the member shall be transferred through medical channels to the appropriate hospital for a formal hearing.

(f) The convening authority of a medical board for good and sufficient reason, and with the consent of the member concerned, may withdraw any case he has referred to the Central PEB so long as the case is still before the Central PEB and recommended findings have not yet been made. If recommended findings have been made by the Central PEB and the convening authority considers that good and sufficient reasons exist for withdrawal of the case from the Disability Evaluation System, the convening authority may, with the consent of the member concerned, request the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, or the Chief, Bureau of Medicine and Surgery, to withdraw the case under the provisions of Subpart H of this part.

§ 725.310 Line of duty/misconduct reports.

In each case in which a member of the naval service incurs an injury which might result in a permanent disability or which results in his physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct must be made. Responsibility to order investigation in such cases is contained in the JAG Manual, section 0806. Whenever a copy of the report of investigation or injury report is not

forwarded with the medical board report, a copy of all communications initiated by the hospital, with copies of all replies received, to obtain a copy of the investigative or injury report shall be attached to the medical board report with a statement explaining the circumstances of the injury. The statement shall include the name and address of the command having responsibility for the investigation, or a finding of not misconduct and in line of duty.

§ 725.311 Cases involving discipline.

(a) When a medical board report is considered necessary and an administrative involuntary separation or court-martial proceedings or investigative proceedings are pending, indicated, or have been completed, and in cases of uncompleted sentences of courts-martial involving confinement where the disciplinary features of the case warrant resolution prior to or in connection with further disposition, the medical board report together with all pertinent facts relative to the disciplinary aspects of the case shall be submitted to the Navy Department for such administrative action as is deemed warranted and no orders directing disposition or authorizing the appearance of the member before a PEB shall be issued by the convening authority.

(b) The Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, may either direct disciplinary processing, direct disability processing, or direct concurrent disciplinary and disability processing of the member's case.

§ 725.312 Request for medical records.

When the indicated disposition of the medical board is referral to a PEB and the convening authority concurs and is the Commanding Officer of a naval hospital or U.S. Naval Hospital, the Commanding Officer of the Naval Submarine Medical Center, or the Commandant of the Fourteenth Naval District, he shall advise BUMED (Code 3342), and request that the member's medical records be forwarded to the ONDE (Central PEB). In all other cases, where the indicated disposition is referral to a PEB, the Central PEB shall take such action as may be necessary to obtain the medical records. (See: Art. 18-25 ManMed.)

§ 725.313 Requests for statements of service.

The command responsible for making the determination that a member's case be referred to a PEB (generally the convening authority of the medical board, the Chief of Naval Personnel, or the Commandant of the Marine Corps) shall initiate a request to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, that a statement of service for the member concerned be provided to the Central PEB. Requests addressed to the Chief of Naval Personnel shall be sent to Pers-E. Requests addressed to the Commandant of the Marine Corps shall be sent to Code DM. All requests should be by message, when appropriate, and should include the member's social security number, full name, grade or rate and Navy Enlisted Classification code (NEC) or Military Occupation Speciality (MOS), when appropriate. (See: Art. 18-26, ManMed.)

§ 725.314 Terminal/death imminent cases.

(a) The provisions of this section apply to members of the Navy and the Marine Corps who are patients in a hospital.

(b) It is not within the mission of the Department of the Navy to provide definitive medical care to members on active duty requiring prolonged hospitalization, who are unlikely to return to duty. The time at which a member should be processed for disability separation must be determined on an individual basis, taking into consideration the interests of both the Government and the member. However, before initiating disability evaluation procedures on a patient who has been identified as a terminal case, the hospital commanding officer shall insure that "optimum hospital improvement" has been attained. When "optimum hospital improvement" has been attained, disposition of the patient shall be governed by humanitarian consideration, with due regard for the economic condi-

tions of the patient and his beneficiaries. However, terminal cases shall neither be retained nor separated solely for the purpose of increasing their retirement or separation benefits.

(c) Normally, a terminal medical case will be processed in accordance with the instructions of the other chapters of this Manual. However, if death is so imminent as to preclude completion of routine procedures, and application of the criteria set forth in paragraph (b) of this section warrants early separation of a member, whose case has not been presented to a PEB, a message report from the hospital commanding officer, or telephone communication, if necessary, shall be made directly to the Office of Naval Disability Evaluation, Washington, D.C., providing information necessary for disposition to be made. Outside of normal working hours these communications shall be made to the Duty Officer, Bureau of Medicine and Surgery. Such communications shall include the following information, insofar as possible:

(1) Member's full name, rank/rate, SSN, USN/USNR, USMC/USMCR;

(2) Member's duty station (i.e., activity holding records);

(3) Dependency status (i.e., single, married, children, other relatives listed in available Emergency Data personnel records);

(4) Whether member has Government insurance and amount;

(5) Status of member as regards Retired Serviceman's Family Protection Plan;

(6) Approximate length of ACTIVE service;

(7) Life expectancy (i.e., hours or days);

(8) Diagnosis and diagnostic nomenclature number (IDCA);

(9) If death is imminent, as a result of an injury, as opposed to a disease:

(i) Duty status of member at time of accident (i.e., leave or liberty, authorized or unauthorized);

(ii) Opinion of investigating officer, regarding line of duty/conduct;

(iii) Brief of circumstances of accident, including time and date of injury.

(d) In a case in which the PEB proceedings have already been forwarded to the Office of Naval Disability Evaluation and then death becomes imminent, such fact shall be made known to the Office of Naval Disability Evaluation immediately, so that action may be expedited, if warranted. Outside of normal working hours, the procedure described in paragraph (c) of this section shall be followed.

(e) Commanding officers of naval hospitals or other authorized persons shall insure that the spouse, or (if there is no spouse) the legal guardian or custodian of the child or children of mentally incompetent members, is promptly advised of her/his right to request the Secretary of the Navy to make an election in their behalf regarding the Retired Serviceman's Family Protection Plan.

(f) Upon effecting a member's disability retirement, the member, or his next of kin if the member is mentally incompetent (including unconsciousness resulting from disease or injury), shall be immediately advised of the right to file for "Disabled Veterans' Insurance" under the National Service Life Insurance Act, as amended 38 U.S.C. 722. In cases of mental incompetence, as defined in this subsection, if the next of kin or some other close family member to whom this information can be furnished is not available, so apprise the Chief of Naval Personnel or the Commandant of the Marine Corps (DN), as appropriate, immediately of that fact, and as to the date on which, and the person to whom, such information was furnished.

§ 725.315 Expedited disability separation.

(a) The provisions of this section apply only to members of the Navy and Marine Corps who are patients in a service hospital.

(b) When it appears obvious at the time of admission to the hospital that a member's condition is of such a nature that he is never likely to return to duty, and immediate transfer to a Veterans' Administration Hospital is medically indicated, the member may be processed for physical disability retirement prior to attaining optimum hospital improvement in the service

hospital. The medical officer treating the case will, within the first 10 days of the member's hospitalization, inform the hospital commanding officer, who shall immediately forward the following information to the ONDE (PRC) by speedletter (air mail where appropriate, telephone in extreme cases), with information copies to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, the Judge Advocate General, and the Chief, Bureau of Medicine and Surgery. Simultaneously, if indicated, a request to the Armed Services Medical Regulating Office (ASMRO) for bed designation in a VA hospital should be submitted, if the member requires further hospitalization and the member can be transported. The speedletter shall refer to this paragraph and shall state:

(1) Member's full name, rank/rate, SSN, USN/USNR, USMC/USMCR;

(2) Member's duty station (i.e., activity holding records);

(3) A VA Claim has been prepared and reviewed by a VA representative and is ready for submission upon execution of TDRL orders;

(4) Approximate length of ACTIVE service;

(5) Diagnosis and diagnostic nomenclature number (appending an interim Narrative Summary, to include a description of functional impairment);

(6) If the condition which renders the member unfit is the result of an injury, as opposed to a disease:

(i) Duty status of member at time of accident (i.e., leave or liberty, authorized or unauthorized);

(ii) Opinion of investigating officer regarding line of duty/conduct;

(iii) Brief of circumstances of accident. In addition to the interim Narrative Summary, there shall be appended to the speedletter report a statement signed by the member concerned agreeing to the special processing of his case and waiving his right to a full and fair hearing before a physical evaluation board (NAVMED Form 1900/1).

(c) Subject to the availability of space and facilities and capabilities of the professional staff, hospital commanding officers may approve requests from members processed under this paragraph for retention in a service hospital until optimum service hospital improvement has been achieved.

(d) In those instances where the member, after counseling, declines special processing of his case, he shall sign a statement to that effect, to be made a permanent part of his record, and his case shall be processed routinely in accordance with applicable provisions of this part.

(e) Hospital commanding officers shall, upon transfer of a member to a Veterans Administration Hospital, request that the VA hospital forward to the ONDE (PRC) a copy of the Narrative Summary prepared upon the member's discharge from treatment, or interim summaries at six-month intervals, whichever is appropriate.

Subpart D—Office of Naval Disability Evaluation

§ 725.401 Convening authority.

The Secretary of the Navy has established the Office of Naval Disability Evaluation (as a Department of the Navy Staff Office).

§ 725.402 Composition.

The Office of Naval Disability Evaluation shall be composed of a Director (Navy line flag officer or Marine Corps general officer), a Deputy Director (who is a Marine Corps colonel, when the Director is a Navy line flag officer, and a Navy captain when the Director is a Marine Corps general officer), and administrative facilities and personnel to support it, the Physical Review Council, the central and the formal physical evaluation boards, the Disability Evaluation System counselors, and such other personnel as are required to perform its function.

§ 725.403 Function and jurisdiction.

(a) The Director shall supervise, regulate, monitor, coordinate, and administer the Disability Evaluation System in conformity with 10 U.S.C. chapter 61 and other applicable provisions of law and regulations. The Director shall also provide for the physical disability evaluation of Navy and Marine Corps personnel for retention, retirement, or discharge and shall have pri-

mary cognizance within the Department of the Navy for matters relating to the Disability Evaluation System. The Director, ONDE, shall convene and have jurisdiction over the PRC and the PEB's. He shall control, unify, and standardize the administration of the Disability Evaluation System and shall establish criteria and provide for the training of personnel assigned thereto. In addition, the Director shall have jurisdiction over the Disability Evaluation System counselors, providing training and guidance for these personnel in the exercise of their responsibilities.

(b) The Director shall not normally take part in the review of any particular case, except upon completion of action in a given case he may review same for the purpose of establishing policy or changing existing policy.

(c) The Director shall, with secretarial approval, issue and maintain manuals and similar publications and orders and instructions to promulgate policies and procedures relating to the Disability Evaluation System and as necessary to his function as set forth herein. He is authorized to issue changes to such manuals and similar publications when concurred in by all interested bureaus and offices and by the Judge Advocate General, as provided by Article 1205, U.S. Navy Regulations.

(d) The Director shall establish military and civilian personnel ceilings and staffing, and equipment and space requirements for the Office of Naval Disability Evaluation and for the field PEB's and shall formulate budget requirements for this purpose.

(e) The Director shall review proposed legislation affecting disability evaluation.

Subpart E—Physical Evaluation Boards

§ 725.501 Function.

(a) Under the provisions of 10 U.S.C. 1214, no member of the Armed Forces may be retired or separated for physical disability without a full and fair hearing if he demands it. Physical evaluation boards are constituted to afford hearings incident to evaluation of the physical fitness of certain members and former members to perform the duties of their office, grade, rank, or rating. The PEB is a fact-finding body established for the purpose of:

(1) Providing a full and fair hearing for the party concerned;

(2) Investigating the nature, cause, degree, and probable permanence of the disability of any party whose case may be brought before it; and

(3) Making recommended findings for the determinations required by law to establish eligibility of the party concerned for retention, disability retirement, or separation.

(b) PEB's are located at the Department of the Navy, Office of Naval Disability Evaluation, Washington, D.C.; Naval Hospital, Bethesda, Md.; Ninth Naval District Headquarters, Great Lakes, Ill.; and the Naval Hospital, San Diego, Calif. The Central Physical Evaluation Board located at the Office of Naval Disability Evaluation, hereinafter referred to as the Central PEB, considers cases under the informal hearing procedure only. The PEB's at the other locations consider cases under the formal hearing procedure and do not use the informal hearing procedure, except as the ONDE may specifically direct. Additional PEB's may be convened as the need arises.

§ 725.502 Jurisdiction of boards.

A PEB shall have jurisdiction to act in any proper case referred to it by the Secretary (JAG), the Commandant of the Marine Corps, the Chief of Naval Personnel, the Chief, Bureau of Medicine and Surgery, the Naval Physical Disability Review Board, the Director, Office of Naval Disability Evaluation, or any officer listed in § 725.307 of this Manual.

§ 725.503 Convening authorities.

(a) In addition to the authority granted in chapter 4 of this Manual, the Secretary of the Navy may, from time to time, empower other officers to convene PEB's.

(b) No officer may appear as the party whose case is to be evaluated before a PEB which has been convened by him or anyone temporarily succeeding to his office or by any one under him in the chain of command.

§ 725.504 Apppointment of boards.

(a) Orders appointing PEB's shall:

(1) Cite the authority therefor;

(2) Designate the time and place of meeting;

(3) List, by name, the regular members, counsel for the board, and counsel for the party; and

(4) List, by name, the alternate members.

(b) Certified copies of such orders and amendatory orders shall be forwarded to the Judge Advocate General by the convening authority. The original orders appointing PEB's and originals of all amendatory orders shall be retained by the boards until canceled. When canceled, they shall be forwarded to the Judge Advocate General, by way of the convening authority.

§ 725.505 Composition.

(a) A PEB will be composed of competent and mature officers of sound judgment who are familiar with board procedures and, in particular, with the regulations and instructions pertaining to the Disability Evaluation System. The board shall be comprised of three commissioned officers in the rank of CDR/LCOL, or above, as members, one of whom shall be a medical officer and two of whom shall be nonmedical officers and, whenever practicable, line officers of the naval service. Unless directed otherwise by the convening authority, when the party concerned is a member of the Marine Corps, the president of the board shall be the senior Marine Corps member and when the party concerned is a member of the Navy, the president of the board shall be the senior nonmedical Navy member. However, in cases arising under 10 U.S.C. 1554, the PEB shall be composed of five commissioned officers as members, three of whom shall be nonmedical officers and two of whom shall be medical officers. Counsel for the board and counsel for the party shall also be appointed in formal PEB's. The members of the board shall be of substantially comparable rank and experience. Under no circumstances will differences in rank or experience be permitted to inhibit or influence junior members in the expression of their opinions. Whenever practicable, at least a majority of the members of the board who act on a case shall be senior in rank to the party, but this requirement may be waived in writting by the party, or, in the absence of objection by the party or his counsel, shall be considered as waived. When the party is a member of a Reserve component, at least one member of the board acting on his case shall be a Reserve officer. If a Reserve officer is not assigned to permanent duty on the PEB, one of the alternate (Reserve) officers must be utilized.

(b) Appointment to membership on a PEB shall constitute a primary duty of the officers so assigned. Although alternate members may (and should) be appointed, the number thereof is to be kept to the minimum consistent with the expeditious processing of PEB cases and the maintenance of continuity of the membership. The use of alternate members should be reserved for cases when the regular members are absent because of leave or illness or as may be required for a Reserve party.

§ 725.506 Membership and assignment of personnel.

(a) The Chief of Naval Personnel and the Commandant of the Marine Corps, as appropriate, shall assign officers to the Director, ONDE, for duty as permanent nonmedical members of PEB's. The Chief, Bureau of Medicine and Surgery, shall make available for assignment to the Director, ONDE, officers for duty as permanent medical members of PEB's. The District Commandants through their law centers serving the geographical area in which PEB's are located will provide officers qualified in accordance with 10 U.S.C. 827 (Art. 27, UCMJ) for duty as counsel for the formal boards and for the parties whose cases are under consideration. Officers so assigned as counsel shall be competent, mature officers, who have had substantial experience as primary counsel in adversary proceedings before fact-finding tribunals.

(b) Officers assigned to field/formal PEB's as permanent members shall be attached to the military commander of the area in which located for logistic and administrative support and for

court-martial jurisdiction. Operational and technical control shall be exercised by the Director, ONDE. The normal tour of duty for personnel assigned to PEB duty shall be for 2 years. Generally, tours shall not be extended.

(c) No medical officer shall act as a medical member of a PEB if he has direct charge of the case of the party concerned immediately preceding appearance before the board or if he was a member of a board of medical officers which reported on the party concerned.

(d) Officers of the Dental Corps and the Nurse Corps are considered to be nonmedical officers, as used in this chapter, and may act as PEB nonmedical members only when the case under consideration concerns a member of their Corps.

(e) The Commandant of the Marine Corps, Commandants of Naval Districts, and/or Commanding Generals of Marine Corps Bases in which PEB's are located shall furnish the Director, ONDE, upon his request, with the names of senior Navy and Marine Corps nonmedical members and medical officers to act as alternates.

(1) At least two of the alternate members must be officers of the Navy and/or Marine Corps Reserve.

(2) Designation of alternate members is authorized in order to allow the expeditious processing of cases during absences of permanently assigned personnel. Alternate members shall not act on cases until their names have been promulgated in an appointing order. The authorization of alternate members is not intended as a means of providing rotation of officers for duty on PEB's nor as a vehicle to circumvent the requirement for permanently assigned personnel.

(3) The president of a PEB shall assure that alternate members serving on his board are familiar with their duties and responsibilities.

§ 725.507 President, duties and responsibilities.

The president shall take appropriate action to preserve order in open sessions of the board and to insure that the proceedings are conducted in a dignified and judicial manner. He shall rule upon all interlocutory questions except challenges. His rulings on interlocutory questions may be objected to by other members of the board, in which case the matter will be decided by a majority vote of the board members in closed session. For good reason he may recess or adjourn the board or grant a continuance in the case. He shall preside over closed sessions of the board and speak for the board in announcing its recommended findings and the result of any vote upon challenge or other interlocutory question. He and the counsel for the board shall authenticate the record of proceedings, except that, in the absence of the president, the record may be authenticated by any other member who acted on the case.

§ 725.508 Members in general, duties and responsibilities.

It is the responsibility of each member of the board to weigh and impartially to examine the evidence presented in a case and to make recommended findings, each according to his conscience and in conformity with applicable laws, regulations and established policies. Each member has an equal voice and a vote with the other members in deliberating upon and deciding all questions submitted to a vote. Each member may question witnesses in an order prescribed by the president. Members of the board may discuss the case freely in closed session, but, except as authorized to be set forth in the record of proceedings pursuant to this chapter, the opinions expressed by any member in closed session shall not be disclosed.

§ 725.509 Counsel for the Physical Evaluation Board.

(a) Counsel for a formal PEB shall be a competent, mature officer of sound judgment, who is familiar with procedures, regulations, and instructions relating to the Disability Evaluation System. He must be a member of the bar of a Federal court or of the highest court or a State to be designated as counsel for the board.

(b) Notwithstanding the provision of paragraph (a) of this section that the counsel shall be an officer, a civilian

employed by the Government who is a member of the bar of a Federal court or the highest court of a State may be appointed counsel for the PEB.

(c) The counsel for the PEB, in every case before the board, shall present all available evidence which is relevant to the issues to be decided by the board. This shall include, but not be limited to, the records provided by the Central PEB and such additional information as is considered necessary to assure that the full facts of the case are disclosed. In accordance with procedures prescribed by competent authority, he shall secure or request witnesses to appear before the board and shall obtain depositions, affidavits, or statements which may aid the board in reaching decisions on the issues before it. (See Manual for Courts-Martial, United States, 1969, para 117.) He shall notify the board members, witnesses, counsel for the party, and reporter of the time and place fixed for the hearing and make necessary arrangements to permit a proper hearing to be held. He shall insure that the records of the party concerned are furnished to medical witnesses for examination prior to the hearing and shall perform such other duties as may be required by the president of the board. It is his specific responsibility to insure that the board has before it sufficient information to ascertain as accurately as practicable the circumstances in which the party concerned incurred his disability, the extent of the disability, and, when it appears that the disability existed prior to the party's entrance into active service, its extent at the time of entrance into active service, and all other pertinent circumstances relating to the party's disability. He shall exploit all practicable sources of information in order to bring out all the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned. In carrying out the foregoing responsibility, it is expected that he will utilize his professional skill in the examination or cross-examination of all witnesses. Under the direction of the board, he shall be responsible for expeditious preparation of a complete, fully documented record of proceedings and shall sign the record of proceedings as an authentication of its correctness, prior to signature by the president of the board.

§ 725.510 Counsel for the party.

(a) Counsel for the party before a formal physical evaluation board shall be a competent, mature officer of sound judgment, who is familiar with procedures, regulations, and instructions relating to the Disability Evaluation System. He must be a member of the bar of a Federal court or of the highest court of a State to be designated as counsel for the party.

(b) Notwithstanding the provision of paragraph (a) of this section that the counsel shall be an officer, a civilian employed by the government who is a member of the bar of a Federal court or the highest court of a State may be appointed as counsel for the party.

(c) The designated counsel for the party shall represent the party in every case unless the party obtains civilian counsel at his own expense or other military counsel, if available, or unless the party, after having been given opportunity of consulting with counsel, expressly waives counsel. When counsel other than the designated counsel has been obtained to represent the party, designated counsel may act as associate counsel, if desired by the party. In the case of mentally incompetent parties, the legal representative may obtain civilian counsel at his own expense, or other military counsel, if available. In the event such counsel is not provided, the designated counsel will represent the mentally incompetent party in every case and a waiver of the right to counsel will not be accepted. Any notice or other written communication required or permitted to be given to the party or his legal representative shall be given to the party's military and/or civilian counsel. 5 U.S.C. 500.

(d) An attorney-client relationship between counsel for the party and the party or his legal representative is established as soon as the party's case is received at the PEB for a formal hearing or when he is assigned to the case. If the party is mentally incompetent, the status of counsel for the party shall be analogous to that of a guardi-

an ad litem. Counsel for the party shall fully advise the party or his legal representative of the legal and factual issues and of the merits of the case. He is authorized to communicate directly with the Recorder of the Central PEB and, if he considers that pertinent evidence was overlooked or otherwise not considered by the Central PEB, he may request reconsideration by the Central PEB if same can be accomplished without undue delay. With the written consent of the party or his legal representative, he may waive the party's right to a formal PEB hearing. In the event of such a waiver, the president of the PEB shall immediately return the case file, including such waiver, to the Central PEB, unless competent authority has directed a formal PEB hearing irrespective of waiver therefor. To avoid travel where the party is not in the same area as the PEB, counsel for the party may utilize the DESC to communicate with and advise the party of his rights. Such communications will be considered privileged and not divulged by the DESC to anyone except counsel for the party. If the party is on the TDRL, instructions for counseling the party will be requested from ONDE by counsel for the party.

(e) Counsel for the party shall represent the party before the PEB. He shall prepare his case in accordance with the law and regulations, carry out the responsibilities of counsel for an interested party before a formal fact-finding body, and guard the interests of the party by all honorable and legitimate means. He should be ever mindful that a primary purpose of the PEB is to examine the case comprehensively and to develop a clear, complete, and fully documented record of proceedings, so that intelligent and informed findings can be made by the PEB, at successive levels of review, and, often, in future proceedings.

(f) The specific duties of the counsel shall include:

(1) Conferring with the party (or his legal representative) and advising him of his rights;

(2) Interviewing witnesses;

(3) Requesting counsel for the board to arrange for the attendance of necessary witnesses and other specifically desired evidence;

(4) Presenting the party's case before the PEB including examination and cross-examination of witnesses;

(5) Submitting oral and written arguments to the board, as may be appropriate;

(6) Counseling the party, or legal representative, as appropriate, on the recommended findings of the PEB; and

(7) Preparing or assisting in the preparation of the party's rebuttal, if any.

§ 725.511 Recorder, Central Physical Evaluation Board.

The Recorder, Central PEB, shall be a competent, mature officer of sound judgment, who is familiar with procedures, regulations, and instructions relating to such board and to the Disability Evaluation System. The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will assign to the Director, ONDE, a Recorder for primary duty. The officer so designated shall, in every case before the board, assemble, prepare, and present all available evidence which is relevant to the issues to be decided by the board. This shall include, but not be limited to, the medical records, investigation reports and courts of inquiry, and current disciplinary status of the party concerned. It is his specific responsibility to insure that the board has before it sufficient information to ascertain, as accurately as practicable, the circumstances in which the party concerned incurred his disability, the full extent of the disability, and, when it appears that the disability existed prior to the party's entrance into active service, its extent at the time of entrance into active service, and all other pertinent circumstances relating to the party's disability. When necessary, the Recorder will return the case or exhibit for correction, before presentation of the case for PEB action. If additional data is needed to support the case, the entire record shall be returned to the hospital. The Recorder shall insure expeditious preparation of a complete, fully documented record of proceed-

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ings and shall sign the record of proceedings as an authentication of its correctness, prior to signature by the president of the board.

§ 725.512 Fitness reports.

The Director, ONDE, will submit fitness reports on all personnel permanently assigned to PEB duty. Concurrent fitness reports on officers assigned to PEB duty may be submitted to the Director, Office of Naval Disability Evaluation, Washington, D.C., by the officer having court-martial jurisdiction. Fitness reports on counsel for the board and counsel for the party shall be submitted only by the Reporting Senior of the activity or command to which they are permanently attached.

§ 725.513 Board reporter, interpreter and orderly.

The convening authority shall provide qualified reporters to all PEB's. The military commander providing administrative and logistic support, when necessary, or if requested by the board, the counsel for the board and/or the party, shall provide an interpreter or an orderly, or both, in the same manner as provided for courts of inquiry. Such individuals shall act in the same capacity as in the proceedings of a court of inquiry.

§ 725.514 Informal hearing.

(a) *General.* The informal hearing procedure at the Central PEB is designed to save administrative time in the processing of cases and to insure uniform and equitable application of laws, policies, and directives governing the Disability Evaluation System. The formal (full and fair) hearing contemplated by the law is not interpreted to mean that an informal PEB will not provide full and fair consideration in each case. An informal board must be sure that each case considered is complete and correct in every respect. Although personal appearance before the Central PEB is not permitted, it is the party's right to present his views in writing to the Central PEB, if he so desires, which will be fully considered. The rapid processing intended by the use of an informal hearing by the Central PEB must not be permitted to override the fundamental requirement of consistently thorough evaluation of each case.

(b) *Procedures.* (1) Upon receipt of a case by the Central PEB, the Recorder shall immediately review the file to insure that all required documents have been received and take immediate action to obtain any missing documents. As soon as this is completed, he shall refer the file to the president of the Central PEB.

(2) The Central PEB shall review the file and make findings and recommendations according to the rules prescribed in this chapter. The entire file shall then be returned to the Recorder, who shall promptly transmit the file to the appropriate PEB in cases where the party is mentally incompetent or, because of his condition, it would be deleterious to his health for him to have personal knowledge of material in his file; otherwise, the Recorder shall cause the results of the PEB's action to be telephoned promptly to the DESC concerned. The Recorder shall insure that a notation is made in the file that the DESC has been informed of the recommended findings.

(3) The DESC shall, on being informed of the action taken by the Central PEB, without delay (within 48 hours excluding Saturdays, Sundays, and holidays), notify the party of such findings and shall explain the consequences of this action to the party and counsel him as to his rights. Thereafter, the party will have 3 days (excluding Saturdays, Sundays, and holidays) to elect either to concur in the action of the Central PEB or to demand a formal PEB hearing, with or without personal appearance. This will normally be accomplished on an appropriate form. If the party concurs, the Central PEB Recorder shall promptly transmit the entire case file to the PRC. If the party does not concur, he shall state his reasons for nonacceptance. The DESC shall inform the Central PEB Recorder by the most expeditious means of the party's decision and forward to him appropriate forms or papers which have been completed, as necessary. If a party fails to indicate his election within the time allowed or if he refuses to make an election, it is

to be considered that he has demanded a formal hearing. The Central PEB Recorder shall immediately be notified of such nonelection, and the party shall be directed to appear before a formal PEB to insure that his legal rights are effectively preserved. Upon request from the DESC, the Central PEB Recorder may authorize a limited extension of time for the party to make his election when such action would be in the best interests of all concerned. Normally a reasonable extension will be granted when requested and needed by the party to consult with legal counsel.

§ 725.515 Personal appearance.

(a) Orders for a personal appearance before a formal PEB shall be issued by the authority which referred a case into the Disability Evaluation System upon notification from the Director, ONDE, that such appearance has been requested by the party or that a formal hearing is in the best interests of the party and the Government. Personnel who are in a patient status shall be transferred from hospital to hospital for formal (full and fair) PEB appearance in accordance with U.S. Navy travel instructions. Transportation through facilities of the Armed Services Medical Regulating Office (ASMRO) shall be utilized to the fullest extent possible.

(b) When the party concerned demands a formal hearing, he shall appear personally before a PEB for a formal hearing, unless there is an opinion by a medical board or a determination by the PEB that to do so would be detrimental to his health. In addition to the fact that it may constitute a military offense, failure to appear when so directed or authorized shall be considered as a waiver of the right of the party concerned to appear before the board unless it is reasonably shown that such failure was through no fault of the party. However, the board may, at its discretion, waive the appearance of the party, if so requested in writing by the party concerned. Such request shall be appended to the record of proceedings of the board.

§ 725.516 Formal hearing (full and fair).

(a) *General*—The purpose of a formal hearing is to accord the party his right to a full and fair hearing, as provided in 10 U.S.C. section 1214. For the purpose of this Manual, the rights of the party shall include, but not be limited to:

(1) Personal presence, unless injurious to his health;

(2) Representation by qualified counsel during all stages of the proceedings until final action on the case is effected;

(3) Challenge of members for cause;

(4) Presentation of evidence in his own behalf;

(5) Securing witnesses, records, depositions, affidavits, and statements on relevant issues, insofar as practicable;

(6) Cross-examination of witnesses;

(7) Presentation of arguments in his behalf;

(8) Having the issues in his case decided only on evidence adduced and presented in the hearing; and

(9) Filing a rebuttal to the recommended findings of the PEB, and, in certain circumstances, to filing a rebuttal to the recommended substitute findings of the Physical Review Council.

(b) *A formal hearing shall be conducted:* (1) When the party (legal representative) demands it;

(2) When the party fails or refuses to indicate an election following an informal hearing;

(3) When the president, Central PEB, determines that a formal hearing is necessary in the best interests of the party or the Government (e.g., to document the testimony of witnesses or to clarify the official records);

(4) When directed by the Director, ONDE, or other competent authority; or

(5) Whenever otherwise required under this Manual.

(c) *Preliminary actions*—The president of the PEB will establish the date and time of the hearing, subject to the following rules:

(1) Not less than 3 days prior to the date a hearing is to be held, the party, his counsel and/or legal representative, as appropriate under paragraph (h) of this section, will be allowed to

inspect all records assembled for the hearing, to have copies of same made, if practicable, and to make necessary notes in preparation of his case;

(2) The party may waive this period or any portion thereof;

(3) If additional time is required to prepare his case, a written request for extension of time will be forwarded to the president of the PEB, who, in turn, will endorse the request to the party through his counsel indicating approval or disapproval and the date and time of the rescheduled hearing; and

(4) In instances where the party is incompetent, ample time for travel will be allowed if the legal representative desires to be present at the hearing.

(d) *The counsel* for the PEB shall carry out the duties and responsibilities set forth in § 725.509 in every formal hearing.

(e) *Failure of party to appear for formal hearing*—When a party (except in mentally incompetent, deleterious to health, or absentia type cases) fails to appear, after having elected to do so, the president of the PEB will suspend the hearing and determine the reason for the party's absence. If there appears to be no reasonable excuse for the absence, the hearing will proceed and the president will include in the record a statement of circumstances. Should the party later appear before the hearing is concluded, the president may recess the hearing and permit the counsel to brief the party on the proceedings up to that point.

(f) *Waiver of appearance by the party*—A party may waive in writing his personal appearance at a formal hearing. In such a case, the appointed counsel, or individually selected counsel if there is one, must be present and represent the party during all open sessions of the hearing and perform the duties of counsel during post-hearing actions.

(g) *Representation by counsel*—Each party shall be represented by counsel at a formal hearing. His duties and responsibilities are set forth in § 725.510.

(h) *Availability of records to party*—All records assembled for use during the hearing, including those furnished by the Director, ONDE, and by other official sources, and requested by the party, shall be made available to the party and his counsel for review. In cases involving mental incompetence or when disclosure to the party of information relative to his mental or physical health would be injurious to mental or physical well-being, only the counsel and, if present, the legal representative may examine the records. The party (legal representative) and counsel may make any notes from the records necessary for proper preparation of the party's case and have copies of same made to the extent practicable. All official reference material used by the PEB shall be made available to the party (legal representative) and his counsel.

§ 725.517 Formal hearing procedures.

(a) *Appendix A*, a procedural guide, shall be used by all formal PEB's. The verbatim record of all matters of business before the board in open session will be attached to NAVSO 6100/16.

(b) *Challenges.*—(1) Any member of a PEB may be challenged at any time during the hearing for cause stated to the PEB. The board will not receive a challenge to more than one member at a time. After disclosing grounds for challenge, the party may examine the member of the board. This examination may or may not be under oath at the discretion of the challenging party but, in either event, shall be recorded verbatim. The counsel for the board may cross-examine the challenged member. After such examination and cross-examination any other evidence bearing on the member's fitness to serve shall be heard. If the challenged member is to be examined under oath as to his fitness to serve, the counsel for the board shall administer the oath or affirmation as set forth in Appendix A.

(2) The burden of establishing the challenge is on the party who made the challenge. The challenged member shall withdraw when the board is closed to vote upon the challenge. A unanimous vote (or a majority vote of a five-member board) is sufficient to sustain the challenge; a tie vote shall serve to disqualify the challenged

member. The board shall decide the challenge according to the preponderance of the evidence. When a challenge reduces the board below the required number of members, alternate members will be called by the president (or senior member) of the board.

(c) *Administering oaths.*—The prescribed oaths or affirmation for the president and board members, the reporter, and the counsels for the board and the party, as set forth in appendix A, shall be administered to each board (see JAG Manual, sec. 0111). If the form of affirmation is used, the closing sentence of adjuration will be omitted. The counsel for the board shall administer the oath in the form set forth in Appendix A to each party and witness before he first testifies.

(d) *Evidence.*—(1) Before taking testimony, the counsel for the board will, for the record, present all papers pertaining to the case to the board in open session. These papers may be inspected by the party and his counsel during the hearing. The party or his counsel may cross-examine the author of the document, record, or statement by calling him as a witness, if he is located at the installation at which the PEB is located or otherwise reasonably available, or by taking his deposition.

(2) A PEB shall consider all documentary evidence transmitted to it by proper authority. The board, in addition, may require and examine such records as may be in the files of the Department of the Navy that relate to the issues before the board. All evidence having a probative value as to the determination of issues before the board shall be considered. In consideration of the weight or probative value to be accorded evidence, the members of the board are expected to utilize their background and experience, their common sense, and their knowledge of human nature and behavior. In every case, the testimony of the party concerned shall be considered in connection with all the evidence adduced and given such weight as the board may believe it merits. When the testimony presented at the hearing indicates that the party claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the board, there shall be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearing shall be adjourned until such development has been accomplished. Recommended findings of the board shall be based upon evidence consistent with a reasonable probability of truth.

(e) *Party testimony.*—A party appearing for a formal hearing will be advised by the board that, if he so desires, he may:

(1) Testify as a witness, under oath, in his own behalf; in which case, he may be cross-examined as any other witness;

(2) Introduce witnesses, sworn statements, documents, or other evidence in his own behalf and cross-examine witnesses examined by the board;

(3) Make an unsworn statement, personally or through counsel, or both, oral and/or written, without being subject to cross-examination;

(4) Make an oral argument and/or file a written argument (appended to the record of proceedings), personally or through counsel, or both; or

(5) Remain silent.

The party is not required to make any statement relating to the origin, incurrence, or aggravation of any disease or injury he may have, unless the party opens up such matters on his direct testimony before the PEB. (See 10 U.S.C. 1219)

(f) *Witnesses.*—The presence of witnesses at every hearing is not required. The board may summon military witnesses whose presence is requested by the party or his counsel, if the witnesses are reasonably available and if, in the opinion of the board, their testimony is essential or contributes materially to the case. Article 49, UCMJ (10 U.S.C. 849), is used in determining reasonable availability of witnesses. The use of affidavits or depositions to obtain testimony of witnesses is encouraged. The board may summon military witnesses considered necessary to complete its recommendations

and to comply with the legal requirements of a full and fair hearing. To assure the attendance of a military witness, the president of the board will request the proper commander to make the necessary arrangements for the timely presence of the witness, provided he is reasonably available. It is the responsibility of the party and his counsel to make the necessary arrangements for the attendance of a civilian witness appearing on behalf of the party.

(g) *Objections.*—Objections may be made to any action (other than a challenge) taken or proposed to be taken by the board, as well as to the admission of testimony. Objections, when made, are recorded as part of the proceedings. The board must note in the record its ruling on any objections that may be offered. Ordinarily, the objections are passed upon by the president of the board. However, if any other member dissents from the president's ruling, the objection is ruled upon by the board in closed session. The ruling is the decision of the majority of the board and is announced on the reopening of the hearing.

(h) *Continuance of hearing.*—The board may continue a formal hearing on its own motion. A formal hearing may also, for reasonable cause, be continued at the request of the counsel for the board, the party, or his counsel.

(i) *Recommended findings.*—Upon completion of the presentation of the case, the board will be closed for deliberation. No person, other than the voting members, will be present during closed sessions. The voting members then arrive at the recommended findings as prescribed in this chapter. Upon completion of the deliberations, the board will reopen and the findings will be announced to the party or counsel.

(j) *Minority report.*—Each recommended finding made pursuant to this chapter, which is concurred in by a majority of the board, shall constitute the action of the board. Any dissenting member of the board shall make a minority report concerning those particulars in which he does not agree with the action of the board. The report will be attached as part of the record of proceedings. Reference will be made to the attachment in the space provided for minority findings on NAVSO 6100/16.

(k) *Action prior to final adjournment.*—The board, upon its own motion at any time prior to forwarding the record of proceedings, may set aside its previous recommended findings, consider further evidence, and make new recommended findings.

§ 725.518 Recommended findings, members on active duty for more than 30 days (other than for training under 10 U.S.C. section 270(b)).

(a) Upon completion of a formal hearing the voting members shall meet in closed session and, after having considered and deliberated upon all the evidence before it, the PEB shall announce, through the president, the board's recommended findings. The recommended findings shall be made as prescribed in this chapter. The board shall determine:

(1) That the party is fit or unfit because of physical disability;

(2) If the party is unfit, that such disability was (incurred) (aggravated) while the party was entitled to receive basic pay;

(3) That such disability (is) (is not) the result of intentional misconduct or willful neglect, and whether such disability (was) and (was not) incurred during a period of unauthorized absence;

(4) (i) That such disability (is) (is not) the proximate result of active duty (because of aggravation) (when applicable), or

(ii) That such disability (was) (was not) incurred in line of duty, in time of war or National emergency, or

(iii) That the party has over 8 years of active service;

(5) That accepted medical principles indicate that such disability (is) (may be) permanent; and

(6) That such disability is ratable at (percentage) in accordance with the standard Schedule for Rating Disabilities in current use by the Veterans' Administration.

(b) If, for any reason, the PEB is unable to make the foregoing determi-

nations because of insufficient information, the case will be promptly returned to the commanding officer of the referring hospital for clarification. The reason for its return will be clearly stated in the letter of transmittal. Examples of reasons are as follows:

(1) Further physical examination or the preparation of additional records.

(2) Further information and description by the medical board of the party's defects and their effect on his functional ability or his ability to perform duty;

(3) Further hospitalization for observation, evaluation, and reconsideration by a medical board; and

(4) Correction or explanation of apparent errors, omissions, or inconsistencies in case records or supporting documents.

(c) Finding One: Fit/Unfit: (1) If it is considered that the party concerned is fit to perform the duties of his office, grade, rank, or rating, the PEB shall make the following recommendation only: "It is recommended that (name of party) be found fit for duty."

(2) If it is considered that the party concerned is unfit to perform the duties of his office, grade, rank, or rating, solely because of a condition or defect not a physical disability, the PEB shall make the following recommended finding only: "It is recommended that (name of party) be found unfit to perform the duties of his office, grade, rank, or rating because of (specify condition or defect)."

(3) If it is considered that the party concerned is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the PEB shall make the following recommended finding: "It is recommended that (name of party) be found unfit to perform the duties of his office, grade, rank, or rating because of physical disability," namely:

(i) List diagnosis and ICDA number of each disability contributing to the party's unfitness. The primary diagnosis rendering the party unfit shall be listed first. The remaining diagnoses shall be listed in order of importance and degree of impairment caused.

NOTE: In any case in which the party found unfit by reason of physical disability, has more than one condition, the board shall submit recommended findings with respect to each condition causing physical disability which the party presents.

(4) Discussion: (i) "Unfit because of physical disability" is defined in § 725.229, supra. To become eligible for disability benefits under 10 U.S.C. ch. 61, it must be determined that a party is unfit to perform the duties of his office, grade, rank, or rating because of physical disability. Therefore, this is the first determination that must be made. A party is considered unfit because of physical disability when he is unable, because of disease or injury, to perform the duties of his office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his employment on active duty. A party who is not physically qualified to perform full and unrestricted duty is unfit because of physical disability. A party may be unfit because of a defect, or from the combined effect of two or more defects, even though one of them alone would not cause unfitness.

(ii) Although a party may have disabilities which are ratable in accordance with the Veterans Administration Schedule for Rating Disabilities, such disabilities do not necessarily render him unfit for naval service. In each case considered, it is necessary to correlate the nature and degree of functional impairment produced by physical disability with the requirements of the duties to which the party may reasonably expect to be assigned by virtue of his office, grade, rank, or rating (excluding special hazardous duty, such as duty involving flying, etc., but giving due consideration to the requirements of other potential sea, field, or combat assignments).

(iii) A party who has a condition which is likely to render him unfit in the near future will be considered to be unfit for duty, even though he may be physically capable of performing all of his duties at the moment. On the other hand, a party who remains hospitalized or who is convalescing with a prognosis for a return to duty in the near future will be considered to be fit for duty.

(iv) In each case, the overall effect of all defects present must be considered, both from the standpoint of the

effect on the party's performance and requirements which may be imposed on the naval service to maintain and protect him during future duty assignments. The determination of physical disability is not based on such factors as a party's inability to meet the physical standards for enlistment or appointment; or his pending voluntary or involuntary retirement, discharge, or release; or that he does not meet the needs of the service for his special skills; or that he is not physically qualified for specialized duties, such as duty involving flying or duty aboard a submarine; or that he is not physically qualified for transfer to another service or another component or category within the naval service. DOD DIRECTIVE 1332.18 sets forth medical conditions and physical defects which normally render a part physically unfit for further duty. When there is reasonable doubt whether a party is fit or unfit, or as to the nature of the condition causing unfitness, these matters should be resolved on the basis of further clinical investigation and observation, and such other evidence as may be adduced. If after further clinical investigation and observation a reasonable doubt whether a party is fit or unfit still exists, that doubt shall be resolved in favor of the party.

(d) Finding Two: Incurred/Aggravated:

(1) *Form of Finding Two.* Finding Two of the PEB will be as follows:

That such disability (was) (was not) incurred while entitled to receive basic pay; or That such disability was aggravated while entitled to receive basic pay.

(2) *Discussion*—(i) *Service incurred.* "Incurred while entitled to basic pay" is defined in § 725.216 supra. For parties on active duty for more than 30 days, the PEB must determine whether each ratable condition was incurred while entitled to receive basic pay. "While entitled to receive basic pay" encompasses all types of duty which entitled the party concerned to receive active duty pay and any duty without pay, which may be counted the same as like duty with pay. A party is presumed to have been in sound mental and physical condition upon entering active service, except as to physical disabilities noted and recorded at the time of entrance. Any disease or injury discovered after a party enters active service is presumed to have been incurred while entitled to receive basic pay, in the absence of clear evidence to the contrary. Determinations concerning the inception of disease or injury, not noted at the time of entry, should not be based on medical judgment alone, as distinguished from accepted medical principles, or on history alone, without regard to clinical factors pertinent to the basic character, origin, and development of such disease or injury. This determination should be based on a thorough analysis of the entire evidentiary showing in the individual case and a careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of such disease or injury.

(ii) *Service aggravated.* "Aggravation by service" is defined in § 725.206 supra. When, by clear evidence, it is determined that a condition originated before entry on active military service, the PEB must further consider whether the condition was aggravated by military service. Any additional disability resulting from the preexisting physical condition will be presumed to have been caused by service aggravation and, as required by § 725.231 only specific findings of "natural progression" of the preexisting disease or injury based on accepted medical principles, as distinguished from medical opinion alone, are sufficient to overcome the presumption of service aggravation. However, in the case of parties with more than 3 years' service, any increase in the severity of a preexisting disease or injury will be considered as evidence of service aggravation, provided that such increase in severity is not due to the party's intentional misconduct or willful neglect or was not incurred during a period of unauthorized absence.

(e) Finding Three: Misconduct or willful neglect/unauthorized absence:

(1) *Form of Finding Three.* Finding Three of the PEB shall be as follows:

That such disability (is) (is not) due to intentional misconduct or willful neglect and

(was) (was not) incurred during a period of unauthorized absence.

(2) *Discussion.* The PEB is responsible for recommending a finding as to whether or not the disability is the result of the party's intentional misconduct or willful neglect, and whether or not the disability was incurred during a period of unauthorized absence. "Misconduct" is defined in § 725.223 supra, and "unauthorized absence" is defined in § 725.241, supra. The law presumes that any disease or injury was incurred in line of duty, unless there is clear and convincing evidence of intentional misconduct or willful neglect, or that it was incurred during a period of unauthorized absence. Any reasonable doubt will be resolved in favor of the party. The JAG Manual, Chapter VIII, prescribes the manner in which the Line of Duty determinations are made. Evidence received in Line of Duty determinations made in accordance with the JAG Manual, Chapter VIII, is material evidence to be considered by the PEB in arriving at their findings. The record of proceedings in all cases, other than disabilities incurred as a result of enemy action, shall contain documentation which explains the circumstances surrounding the incurrence of the disability. The documentation may be either the report of a fact-finding body (formal or informal), an Injury Report Form, NAVJAG 5800/15, depositions, statements, or testimony elicited at a formal hearing. When a disability is incurred at any time during a period of unauthorized absence, regardless of whether the absence interfered with the member's military duties, the member is excluded from receiving benefits under 10 U.S.C. chapter 61.

(f) Finding Four: Proximate result/line of duty:

(1) *Form of Finding Four.* Finding Four of the PEB shall read as follows:

(i) That such disability (is) (is not) the proximate result of active duty (because of aggravation), or

(ii) That such disability (was) (was not) incurred in line of duty in time of war or national emergency, or

(iii) The party has at least 8 years of active service.

(2) *Discussion.* Unless the party has 8 or more years' active service, the PEB must determine whether each diagnosis listed, which constitutes the party's disability, was the proximate result of the performance of active duty, or that such disability was incurred in line of duty in time of war or national emergency. Disease or injury incurred by naval personnel on active duty for more than 30 days, while serving on active service, is considered to have been incurred in line of duty unless one of the exceptions listed in this § 725.218 applies. A finding regarding proximate result (defined in § 725.232 supra) must be made in injury cases when the member is on active duty orders for 30 days or less, on training duty under 10 U.S.C. 270(b), or on inactive duty training orders.

(g) Finding Five: Permanency of disability:

(1) *Form of Finding Five.* Finding Five of the PEB shall be as follows:

That accepted medical principles indicate that such disability (is) (may be) permanent.

(2) *Discussion.* The PEB will determine for each diagnosis listed, whether the disability "is permanent" or "may be permanent" and record its finding for each (see § 725.230). A disability will be considered as "may be permanent" when, based on medical experience in like cases, it is considered that:

(i) The party may become fit to perform the duties of his office, grade, rank, or rating within 5 years from retirement or separation, or

(ii) The compensable percentage rating may, if less than 80 percent, change within said 5 years, or

(iii) The compensable percentage rating, if 80 percent or more, may reduce below 80 percent during said 5 years.

(h) Finding Six: Percentage ratings:

(1) *Form of Finding Six.* Finding Six of the PEB shall be as follows:

That such disability is ratable at ( ) percent under the standard Schedule for Rating Disabilities in current use by the Veterans' Administration, as follows: (tabulate method for determining percentage).

(2) *Discussion.* The law provides for the use of the Veterans' Administration Schedule for Rating Disabilities (VASRD) in determining the percentage of disability of a party who is found to be unfit because of physical disability and is otherwise eligible for disability benefits. The VASRD does not prescribe standards under which fitness for military duty may be determined. A party may have a disability which is ratable in the VASRD, but which is not considered to be of sufficient importance to render him unfit for duty. Therefore, the VASRD is not to be used until the party has been found unfit to perform his duties. The board members and reviewers must be familiar with the entire contents of the VASRD, including the general policies, introductory paragraphs to sections, and italicized footnotes. Failure to adhere to criteria of the Schedule, except as provided in DOD DIRECTIVE 1332.18, will result in error and consequent delay in disability processing. Some of the rules more commonly used in applying the Schedule are as follows:

(i) *Degree of severity.* The basis of disability evaluation, and of the assessment of degrees of severity of disabilities, is the ability of the individual as a whole, to function under the circumstances of ordinary activity; that is, in daily life under normal environment. In this connection, it must be remembered that an individual may be too ill, weak, or otherwise disabled, to engage in work, although he may be up and about and fairly comfortable at home or upon limited activity.

(ii) *Disabilities not listed.* In view of the number of atypical instances, it is not expected that every disability evaluated will show all of the symptoms and signs described in the various Veterans Administration ratings. Since the codes merely mention the most common ones, sign and symptoms of closely related disabilities will be considered by analogy. Findings sufficiently characteristic to identify the disability and its degree of severity and, above all, coordination of the rating with the impairment of function must be made in all instances.

(iii) *Reasonable doubt.* When, after careful consideration of all evidence, a reasonable doubt arises regarding the degree of severity of a disability, such doubt shall be resolved in favor of the party.

(iv) *Pyramiding.* Evaluation and rating of the same disability under more than one diagnosis (pyramiding) shall be avoided.

(v) *Zero rating.* Occasionally a disability is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VASRD under the applicable diagnostic code number. A zero percent rating may be applied in such cases although the lowest listed rating is 10 percent or more. However, in instances in which the VASRD specifies a "minimum rating," a rating no lower than the prescribed minimum shall be assigned.

(vi) *Amputation rule.* The combined permanent rating for disabilities of an extremity shall not exceed the rating for the amputation level next higher than the site of the injury. A disability of an extremity shall not be given a higher rating that would be given if the limb were amputated at the most distal of the customary amputation sites which would include the affected area (region) in the part removed.

(vii) *Interpolation of VA ratings.* Although rating scales in the VASRD have been carefully constructed and tested to reflect proper ratings for varying degrees of severity of a disability based on the nature of the disease and the progression of its manifestations, in many instances ratings cannot be graduated in precise increments of 10, but will range from 20 percent to 40 and 80, or from 30 percent to 60 and 80. Interpolation of these ratings shall not be attempted by Navy adjudicative bodies in the disability system.

(viii) *Combined compensable rating.* If the party is found to be physically unfit and eligible for disability benefits, the percentages of all compensable disabilities are combined in the manner prescribed in paragraph 25 of the VASRD.

(*a*) Combined compensable ratings will be converted to the nearest number divisible by 10, and combined ratings ending in 5 will be adjusted upward.

(*b*) When a partial disability results from disease or injury, of both arms, or both legs, or paired skeletal muscles, or there is a bilateral involvement of peripheral nerves, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (not combined) before proceeding with further combinations or converting to the combined compensable rating. For example, if ratings for disabilities in paired extremities are combined to equal 59 percent, 5.9 percent (10 percent bilateral factor) will be added to the 59 percent to total 64.9 percent which is then converted to 65 percent and, in accordance with the same rule, is converted to 70 percent. This is proper even though the combined rating was less than 65 percent and underwent two upward conversions.

(ix) Prescribed VA Codes in accordance with the VASRD will be assigned to each diagnosis listed on NAVSO 6100/16. In selecting appropriate codes, consider the following:

(*a*) Description of functional impairment in medical records must be checked against the VASRD name of the disease or injury and its modifying terms.

(*b*) Related diagnoses should be merged for rating purposes when the VASRD provides a single code covering all their manifestations. This prevents pyramiding and reduces chance of overrating.

(i) Basis of recommended findings: It is essential that the record clearly reflect facts sufficient to form the basis for the recommended findings. Accordingly, the board should state in the record its basis for conclusions on issues where the record presents substantial evidence for more than one conclusion on such issues. In any case where the board makes a finding of misconduct or not in line of duty which conflicts with the approved findings of any other fact-finding body of which the board has knowledge, the board shall state in the record the basis for its conclusions.

§ 725.519 Recommended findings, members on active duty for 30 days or less, or training duty under 10 U.S.C. section 270(b).

The board shall make the same recommended findings as prescribed in § 725.518(a), except that finding (2) thereunder should be as follows:

That such disability (is) (is not) the result of an injury.

[36 FR 21968, Nov. 18, 1971, as amended at 39 FR 18441, May 28, 1974]

§ 725.520 Recommended findings, inactive duty training.

The board shall use the same phraseology in its recommended findings as prescribed in § 725.519, except the words "inactive duty training" shall be substituted for the words "active duty" in recommended findings § 725.518(f)(1)(i).

NOTE: For §§ 725.519 and 725.520: If not the result of an injury, no additional recommended findings are required. If the result of an injury, then the subsequent recommended findings shall relate only to disability resulting from the injury and a recommended finding whether the disability is the approximate result of performing such duty shall be made under finding (4)a of § 725.518(a).

§ 725.521 Recommended findings, cases arising under 10 U.S.C. sections 1004 and 1163.

(a) Boards acting in cases arising under 10 U.S.C. 1004 and 1163 shall make the following recommended findings:

It is recommended that (name of party) be found (physically qualified) (not physically qualified) for active duty in the (U.S. Naval Reserve) (U.S. Marine Corps Reserve).

(b) If it is recommended that the party be found not physically qualified, the board shall set forth the disqualifying defect or disability, and the diagnostic nomenclature number (ICDA number) therefor, and give an opinion as follows:

Such disability (is) (is not) due to intentional misconduct or willful neglect.

(c) In determining the party's physical qualifications for active duty, the impairment of function suffered will be correlated with the requirements of

the duties to which he may reasonably expect to be assigned if recalled to active duty in his current rank or rate.

§ 725.522 Recommended findings, cases arising under 10 U.S.C. section 6331.

Boards acting in cases arising under 10 U.S.C. 6331 shall make the following recommended findings only:

It is recommended that (name of party) be found (physically qualified) (not physically qualified) for active duty in the (Fleet Reserve) (Fleet Marine Corps Reserve).

If it is recommended that the party be found not physically qualified, the board shall set forth the disqualified defect or disability and the diagnostic nomenclature number (ICDA number) therefor.

§ 725.523 Recommended findings, re-evaluation of members on Temporary Disability Retired List.

Boards acting in cases of members of the naval service on the Temporary Disability Retired List shall make findings as prescribed in §§ 725.518 or 725.519, as appropriate. For disability for which the party was temporarily retired, recommending findings are not necessary under § 725.518(a) (2), (3), and (4).

§ 725.524 Miscellaneous cases.

Boards considering cases not covered in §§ 725.518–725.523 shall make recommended findings only with respect to issues designated by competent authority.

§ 725.525 Rebuttal.

The party or his counsel shall be advised of the board's recommended findings and shall be afforded 5 days, exclusive of Saturdays, Sundays, and holidays, after receipt of a copy of the record of proceedings of the board, in which to file a rebuttal. A rebuttal will set forth, specifically, the recommended findings of the board with which the party or his counsel does not concur, together with proposed alternate recommended findings which are acceptable to the party. It is not mandatory, but desirable, that a brief, setting forth the legal and factual basis for such nonconcurrence or any other request for relief, be included in the rebuttal. In any case where a PEB is directed to conduct a new hearing or proceedings in revision and the party or his counsel files a rebuttal to the recommended findings arrived at in such proceedings, the rebuttal shall operate to afford the party an automatic appeal to the Naval Physical Disability Review Board, provided:

(a) The recommended findings of such PEB differ in a material respect, detrimental to the party, from any prior recommended findings made in the case by a PEB; and

(b) The proposed substitute findings thereafter made by the Physical Review Council differ in a material respect, detrimental to the party, from the relief sought in his rebuttal.

§ 725.526 Preparation and authentication of proceedings.

The record of proceedings of a PEB shall be prepared in accordance with this Manual.

§ 725.527 Forwarding of record of proceedings.

(a) The complete record of proceedings of the PEB, together with all documents which were before the board, shall be submitted to the PRC. An original and four/five (as appropriate) copies of the record of proceedings shall be prepared by the PEB and distributed as follows:

(1) Original to Office of Naval Disability Evaluation (PRC)

(2) Copy 1 to be retained at PEB

(3) Copy 2 to the party (NAVSO 6100/16 only) in informal hearings

NOTE: When it would be deleterious to party's health to receive his copy, this copy shall be filed in the original record of proceedings, unless specifically requested by the legal representative.

(4) Copy 3 to be filed in Health Record

(5) Copy 4 to DESC (NAVSO 6100/16 only)

(6) Copy 5 to counsel for the party (formal hearings only)

(b) Proceedings of the PEB's will be recorded on NAVSO Form 6100/16. Erasures and corrections must be initialed by the counsel for the board, or the Recorder, as appropriate.

(1) Copies of medical records or reports received from sources other than the Armed Services of the United States shall not be furnished parties with mental disorders or to parties imprisoned or confined to correctional institutions.

(2) Copies of medical records shall not be furnished parties when such records contain information which may be deleterious to the party's physical or mental health.

(c) Assembly of the record of proceedings shall be as indicated in Table 5-1. Pages of the transcript will be numbered consecutively beginning with page 1.

(d) Transmittal of case record of proceedings to the ONDE will be by the most expeditious means available, preferably by Pouch Air Mail.

(e) The foregoing, however, shall not preclude the review of these records by the counsel for the party. The recipient of such copy of the record of proceedings shall give a dated receipt therefor. The record of proceedings forwarded to the ONDE shall include party's signed and dated statement of intention, his statement in rebuttal (if one was filed), and/or a properly executed registered mail return receipt for party's copy of the proceedings. The PEB shall indicate when a party has not been provided a copy of the proceedings or, when only part of the proceedings was provided the party, indicate what part of the record was not provided. The PEB shall request the party to indicate a mailing address where he can be most expeditiously reached. If these documents are not received by the PEB within ten (10) working days after transmittal of party's copy of the proceedings, the proceedings shall be forwarded to the ONDE with notification concerning nonreceipt.

(f) A copy of the record of proceedings having been furnished to party or his counsel, a charge of $0.25 per page will be made for any subsequent copy requested.

§ 725.528 Proceedings in revision and new hearings.

In the event that a PEB is directed to conduct a new hearing, such hearing shall be conducted and the record prepared in the same manner as if the board were meeting in the first instance. The record of proceedings in such case shall be prefixed to the original record. A board directed to convene for a hearing in revision shall, when practicable, consist of the same members who previously acted upon the case and shall proceed as instructed by the referring authority. A board conducting a hearing de novo (a new hearing) shall consist of different members than those who previously acted upon the case.

§ 725.529 Action subsequent to forwarding the record.

In the event any cognizant authority shall receive information, subsequent to the forwarding of a record of proceedings of a PEB and prior to final action thereon, that the party concerned, following his hearing before such board, has:

(a) Committed an offense or offenses such as are believed by the cognizant authority to have a possible bearing on the case and should therefore be brought to the attention of the Office of Naval Disability Evaluation;

(b) Incurred disability in addition to that presented at the time of his hearing; or

(c) Suffered an increase in the disability that was evaluated; or that his status has changed in any respect which might affect final action on the record of proceedings, such authority shall immediately forward this information to the ONDE by message, with information copies to the Chief of Naval Personnel or the Commandant of the Marine Corps (Code DMD), as appropriate, the Judge Advocate General, and the Chief, Bureau of Medicine and Surgery. Such message shall be followed as soon as practicable by a complete report of the matter, together with recommendations, concerning the action to be taken. Upon a change in his status occurring subsequent to his hearing before a PEB and prior to final action thereon, which, in his opinion, might affect final action, the party concerned may forward information of such change in the manner provided above.

§ 725.530 Processing time.

In order to provide information concerning the processing time at the various stages of disability evaluation proceedings, the Director, ONDE, shall provide a form to be appended to each record of proceedings in duplicate for recording the chronology of each such proceedings from the date the medical records are received from the Bureau of Medicine and Surgery to the date of final action (See Appendix "B," NAVSO 6100/9 or 6100/9a, as appropriate).

§ 725.531 Counseling.

(a) *General.* Each party or his legal representative will be counseled throughout the course of disability evaluation processing. The purpose of counseling is to enable the party fully to understand the significance of the findings and recommendations made by the medical board, PEB, PRC, and, if involved, the NPDRB, and his rights with respect to options available to him. Counseling is initially the responsibility of the Disability Evaluation System Counselor (DESC) of the medical treatment facility which conducts the medical board on the member. If, upon advisement of the Central PEB's findings and recommendations, the member demands a formal hearing, the DESC will immediately notify the Recorder of the Central PEB, who will arrange for orders to be issued for such appearance. The counsel for the party, located at the formal board, shall assume the counseling responsibility for all activity connected with that board. After a formal hearing, and the party has returned to the hospital where the medical board originated, or to the administrative command holding the party's Service Record, the counseling responsibility shall be again assumed by the DESC in that geographic area, except counseling which relates to the formal PEB proceedings shall be under supervision of the counsel for the party (See § 725.510(d)). In any event, counseling will be based on the circumstances of the case and designed to serve the party's best interests. Parties under treatment are often most concerned over their eventual disposition. They frequently will have questions about medical board and PEB procedures, about the possibilities for remaining on active duty in spite of their disabilities, and similar questions, to which answers are not readily available. Such questions should be answered so far as available information permits. Generally, the answer to such questions will be to describe procedures used in handling disability cases. In these circumstances, parties will be reassured that they will be counseled from time to time as their cases progress, and they should be encouraged to ask questions whenever they wish. Unless a DESC is a member of a bar of a Federal court or of the highest court of a State, it is not his function to give legal advice to a party or his legal representative. For this purpose the Navy Law Center in said geographic area or if not practicable, a nearby Naval activity therein which renders legal assistance, shall make available at least one officer who is qualified as prescribed in § 725.510(a) for providing legal advice to parties and their legal representatives referred by the DESC or otherwise asking for such advice.

(b) *Stages of counseling.* In particular, counseling will be provided at the following stages of disability evaluation processing:

(1) When the findings and recommendations of the medical board are made known to the party or his legal representative;

(2) When the findings and recommendations of the Central PEB are made known to the party or his legal representative;

(3) When the party's case is to be considered by a formal PEB;

(4) When the findings and recommendations of a formal PEB are announced;

(5) When the findings and recommendations of the PRC are made known to the party or his legal representative; and

(6) When the findings and recommendations of the NPDRB are made known to the party or his legal representative.

(c) *Scope of counseling.* The scope of counseling may vary with the circumstances of the party's case; however, it must include, as a minimum, each of

the matters listed below, to the extent that they are raised by the findings and recommendations:

(1) *Statutory rights.* The party will be advised that:

(i) No member of the naval service may be separated for physical disability without a full and fair hearing, if he demands it.

(ii) If he is a Reservist, he has the right to at least one Reserve voting member on the PEB considering his case.

(iii) He may not be discharged or released from the naval service by reason of disability until he has executed or refused to execute a claim for compensation, pension, or hospitalization to be filed with the Veterans Administration.

(iv) He cannot be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury he has, and that any such statement against his interests, signed by him, is invalid.

(2) *Findings and recommendations.* Each of the several findings and recommendations made by the appropriate board or PRC must be explained in meaningful, understandable language to the party, together with the effect the recommended findings and recommendations will have on his status.

(3) *Pay.* Based on the available data, estimate the amount of retired pay or severance pay the member may expect to receive, if the findings or recommendations are approved and show how pay is computed under the several formulae that may apply. Income tax exemptions that may apply under current tax laws and rulings of the Internal Revenue Service and also estimated withholding tax should be explained. The fact that an election made under the Retired Serviceman's Family Protection Plan will result in a deduction from retired pay, and its amount, should be made known to the party. If temporary retirement is recommended, it is to be emphasized that the subsequent changes that may occur in the compensable percentage of disability as the result of periodic reexaminations will not result in an increase or decrease in the amount of party's retired pay, so long as his name is retained on the Temporary Disability Retired List.

(4) *Grade determination.* The party must be told that the grade in which he will be retired will be based upon the provisions of applicable law, and that determination of highest grade satisfactorily held will be made by the Secretary of the Navy or Secretary of the Armed Service in which previous service was performed.

(5) *Deduction of severance pay from Veterans Administration compensation.* It should be made clear to the party that any disability severance pay he may receive will be deducted from any compensation for the same disability to which he may become entitled from the Veterans Administration, and it is thus important for a party who receives disability severance pay promptly to file a claim with the Veterans Administration so that this amortization by the Veterans Administration or disability severance pay will commence as soon as possible. Otherwise, if he defers filing a claim with the Veterans Administration, at some future date when his need for compensation from the Veterans Administration may be great, its receipt will be delayed while his disability severance pay is recouped.

(6) *Veterans Administration.* (i) Whenever possible, arrangements should be made for a party being retired or separated, because of physical disability, to have a personal interview with the Veterans Administration representative, serving his hospital or installation, concerning his entitlement to Veterans Administration benefits. If, for any reason, this is not feasible, the party shall be counseled as indicated in the following paragraph.

(ii) The party will be advised of his right to apply to the Veterans Administration for disability benefits before separation, or subsequent thereto, or not at all, as he elects. Notwithstanding an election to the contrary, he should be urged to file a claim before separation whether or not he finally decides to avail himself of the Veterans Administration benefits. It must be pointed out that greater monetary benefits may be available from the Veterans Administration, and, although there is no assurance that Vet-

erans Administration benefits will be greater, the party is not bound in any case to accept them. All parties should be especially urged to initiate a claim with the Veterans Administration, because the Veterans Administration benefits may be substantially greater, depending on the party's grade, severity of the disability, and his dependency status. The party will be shown how disability compensation paid by the Veterans Administration relates to retired or severance pay. Other potential benefits, such as past service life insurance, survivors' benefits, medical care, and hospitalization, will be pointed out. It will be emphasized in all cases that the Veterans Administration makes its own determination with respect to entitlements and administration of rights and benefits arising under laws it administers and that the Veterans Administration is not bound by determinations made by the naval service.

(7) *Temporary Disability Retired List (TDRL).* If it has been recommended that the party's name be placed on the TDRL, he will be advised of the effect of such a disposition. He (or his legal representative) will be counseled that he must undergo periodic reexamination when so directed by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, or his retired pay may be suspended. He will be advised that he must notify the Chief of Naval Personnel (B84) or the Commandant of the Marine Corps (Code DGH), as appropriate, of any change in residence. The party must be informed that the maximum time he is entitled to retirement pay as a result of his TDRL status is 5 years and that final disposition may be made at an earlier date, whenever a report of periodic reexamination discloses that his condition has sufficiently stabilized. He will be informed that changes in the degree of severity of his disability will not affect his retired pay while he is on the TDRL, but that his final disposition may result in permanent retirement, with the same, a greater, or lesser percentage of disability; separation with or without severance pay; or an opportunity to reenter the naval service.

(8) The DESC shall insure that each party counseled has been furnished with a copy of the pamphlet, "Disability Separation" (NAVPERS 1586E/NAVMC 1117-PD).

(9) *Review at Departmental level.* Each member will be informed of the review procedures that take place at the Departmental level. He will be told that the PRC, and the NPDRB if a case is referred to them, are authorized to recommend changes or modify PEB findings and recommendations, and he will be advised of the rights and elections available to him in such event.

(10) *Legal advice.* Each party or his legal representative will be informed of his right to seek legal advice from an officer so designated from a Navy Law Center (or other activity). To this end, the DESC will assist him in making arrangements for such consultation.

§ 725.532 Counseling required by other directives.

The counseling required by the preceding paragraphs applies to disability evaluation cases and does not replace further separation counseling required by other directives.

§ 725.533 Action on cases of parties on the Temporary Disability Retired List.

(a) Upon receipt of a report of a periodic physical examination of a party on the TDRL, or a report of other current medical examinations acceptable to the ONDE, the Central PEB shall evaluate such report and take one of the following actions:

(1) If the party's 5-year period on the TDRL will not soon terminate, and the Central PEB considers that no change in his status is indicated, he will be so informed by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(2) If the party's 5-year period on the TDRL will soon terminate, or if the Central PEB considers that a change in the party's status is indicated, the Central PEB will take action in accordance with § 725.523, and, unless the party has already indicated his concurrence in such action, he or his legal representative will be notified of

such action by the president of the Central PEB.

(b) When a party or his legal representative is notified under paragraph (a)(2) of this section, he shall be further informed that he has 5 days, exclusive of Saturdays, Sundays, and holidays, after receipt of notification to demand a formal hearing. After such period (which may be extended by the president of the Central PEB), if a formal hearing has not been demanded, the record of proceedings of the Central PEB shall be forwarded to the PRC. Otherwise, the case shall be referred to a formal PEB for further consideration and action as provided for in this chapter.

§ 725.534 Action when party fails to report for final periodic physical examination.

(a) If the party fails to report for his final physical examination, or otherwise fails to arrange for an acceptable current medical examination, the Central PEB, upon request, shall consider all available records pertaining to the physical condition of the party concerned and, on the basis thereof, recommend to the Secretary (JAG) via the Physical Review Council one of the following final determinations:

(1) That assuming that the party may have undergone maximum improvement consonant with accepted medical principles, he may be considered as fit for duty at the expiration of 5 years after the date his name was placed on the TDRL; or

(2) That, based on the available evidence and accepted medical principles, the party is considered unfit for duty as of the expiration of 5 years after the date his name was placed on the TDRL because of the physical disability for which he was temporarily retired ratable at least at ( ) percent under the standard Schedule for Rating Disabilities in current use by the Veterans Administration.

(b) In the case of a party who has failed to report for a final periodic physical examination, upon a final determination by the Secretary (JAG) as set forth in paragraph (a)(1) of this section, his name shall be administratively removed from the TDRL at the termination of 5 years on such list or as soon thereafter as practicable. However, if the final determination by the Secretary (JAG) is as set forth in paragraph (a)(2) of this section, the party will be permanently retired or separated under 10 U.S.C. sections 1210(c)-(e), as appropriate. The foregoing does not affect any statutory rights if it is subsequently shown that proper notification was not received or that there was just cause for his failure to report. 10 U.S.C. 1210(a).

(c) Action under this paragraph shall be prepared by the Central PEB in such form as its president may prescribe and shall be signed by each member acting on the case and by the Recorder. It shall be transmitted to the Secretary (JAG) via the PRC not earlier than 60 days prior to the end of the 5-year period during which the name of the party is carried on the TDRL.

Subpart F—The Physical Review Council

§ 725.601 Composition.

The Director, ONDE, shall convene a PRC, composed of:

One senior Navy officer provided by the Chief of Naval Personnel,
One senior Marine Corps officer provided by the Commandant of the Marine Corps;
One senior Medical Corps officer designated by the Chief, Bureau of Medicine and Surgery; and
One senior Judge Advocate of the Navy or Marine Corps designated by the Judge Advocate General; as members.

In addition to the members enumerated above, an officer shall be assigned by the Director, ONDE, to act as the Recorder for the PRC. The officers assigned to the ONDE for duty on the PRC shall be fully cognizant of the policies in their areas of responsibility or technical specialty. The Commandant of the Marine Corps, the Chief of Naval Personnel, the Chief, Bureau of Medicine and Surgery, and the Judge Advocate General shall furnish the Director, ONDE, with the names of senior Navy and Marine Corps officers (as appropriate to their area of responsibility) to act as alternates on the PRC, in the absence of the permanently assigned members.

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[36 FR 2198, Nov. 18, 1971, as amended at 41 FR 29814, July 20, 1976]

§ 725.602 Areas of responsibility.

(a) The Navy officer shall provide liaison with the Chief of Naval Personnel for the ONDE and shall implement the personnel rules and policies of the Navy as may relate to disability evaluations. To this end, he shall review each record of proceedings of a PEB forwarded to the PRC in the light of such rules and policies, and his professional knowledge and experience, and, as appropriate, shall advise the other members of the PRC of the proper application of such rules and policies as they apply to cases involving a Navy member.

(b) The Marine Corps officer shall provide liaison with the Commandant of the Marine Corps for the ONDE and shall implement the personnel rules and policies of the Marine Corps as may relate to disability evaluations. To this end, he shall review each record of proceedings of a PEB forwarded to the PRC in the light of such rules and policies, and his professional knowledge and experience, and, as appropriate, shall advise the other members of the PRC of the proper application of such rules and policies as they apply to cases involving a Marine Corps member.

(c) The Medical Officer shall provide liaison with the Chief, Bureau of Medicine and Surgery, for the ONDE and shall implement the rules and policies of such Bureau as may relate to disability evaluations. To this end, he shall review each record of proceedings of a PEB forwarded to the PRC in the light of such rules and policies, established medical principles, and his professional knowledge and experience, and, as appropriate, shall advise the other members of the PRC of the proper application of such rules, policies, and principles.

(d) The judge advocate shall provide liaison with the Office of the Judge Advocate General as may relate to disability evaluations. To this end, he shall review records of proceedings of PEBs forwarded to the PRC whenever:

(1) A determination that a member's disability is due to misconduct or was incurred during unauthorized absence is proposed; (2) a determination is proposed which conflicts with the action on findings, as approved, of a fact-finding body external to the Disability Evaluation System; or (3) there is a request by the Director or other member of the PRC for the proper application of legal rules and principles or professional legal guidance. In addition, the judge advocate shall be legal counsel to the Director for all matters under his cognizance.

[41 FR 29814, July 20, 1976]

§ 725.603 Jurisdiction.

The PRC shall have jurisdiction to act in any particular which is in implementation of its function.

§ 725.604 Function.

(a) It is the function of the PRC to review the proceedings and recommended findings of all formal PEBs and such informal PEBs that may be referred to it by the Director, ONDE. In addition, the PRC shall review the proceedings and recommended findings of all informal PEBs in which the member has accepted a recommended finding of unfit but has requested retention on active duty in a limited assignment status.

(b) The PRC shall make its decisions by vote, with the Navy officer, the Marine Corps officer, and the Medical officer voting in all cases. The judge advocate shall vote in those cases provided for in § 725.602(d). The Navy officer shall be senior member in all cases involving a Navy member, and the Marine Corps officer shall be the senior member in all cases involving a Marine Corps member. In those cases in which the judge advocate has not voted, the concurring action of two or more members shall be considered the action of the PRC. In those cases in which the judge advocate has voted, the concurring action of three or more members shall be considered the action of the PRC. Applications for personal appearance by parties concerned will not be entertained.

[41 FR 29814, July 20, 1976]

§ 725.605 General instructions.

(a) If, after consideration of all the evidence in a case before it, the PRC considers that the recommended findings of a PEB are correct, the record of proceedings of the PEB shall be forwarded expeditiously to the Secretary (JAG) for final action.

(b) In the event that the PRC considers that the recommended findings of the PEB are not correct, but that substitute findings not substantially detrimental to the party are correct, it shall make such substitute findings, and the record of proceedings shall be forwarded to the Secretary (JAG) for final action.

(c) In any case considered under the modified procedure prescribed in § 725.514, wherein the party has accepted the recommended findings of the Central PEB, but the PRC does not agree with the findings and proposes substitute findings substantially detrimental to the party, the PRC shall notify the party of the proposed substitute findings and the reasons for disagreement; the party shall be advised of the courses of action available to him. Thereafter, the party shall be afforded a formal hearing, if he demands it or indicates that the proposed substitute findings are not acceptable to him within 5 days, exclusive of Saturdays, Sundays, and holidays, after the receipt of the notification. However, if the proposed substitute findings of the PRC are acceptable to the party or he does not demand a formal hearing, the record of proceedings (with party's signed statement of acceptance attached) shall be forwarded to the Secretary (JAG) for final action.

(d) If the PRC considers that the recommended findings of the PEB arrived at after the party has had a formal hearing, are not correct, and proposes substitute findings that would be substantially detrimental to the party, the PRC shall notify the party of such substitute findings. If the party submits a statement in rebuttal to the proposed findings of the PRC, and, after considering the statement in rebuttal, the PRC adheres to its proposed findings, the case shall be referred to the NPDRB. However, if the party advises the PRC that its proposed findings are acceptable, or if, in further consideration of the case in the light of the statement in rebuttal, the PRC agrees that the recommended findings of the PEB are correct, the PRC shall forward the record of proceedings to the Secretary (JAG) for final action.

(e) In any case of a party who has had a formal hearing and, as a result of proceedings in revision or a new hearing by a PEB, recommended findings are made, final approval of which in lieu of prior recommended findings made in the case would change final disposition in a manner substantially detrimental to the party, and a rebuttal has been filed to the last PEB's action, the PRC shall refer the case to the NPDRB for further consideration unless the PRC's final findings do not differ in a material respect, detrimental to the party, from the relief sought in the rebuttal.

(f) The PRC may, on its own initiative, take no action on the recommended findings of the PEB and return the case to a medical board for further study; or to the PEB for a hearing in revision for correction of errors, or for further development of the case, or for reconsideration of its recommended findings; or to a PEB comprised of different members for another hearing, or to a PEB in a different area for another hearing.

(g) In the event one of the members of the PRC, in opposition to the other two members acting on the case, is of the opinion that a case should be returned to a medical board or a PEB for any reason, a brief of the facts shall be submitted directly to the Secretary (Director, ONDE) with a request for instructions as to disposition of the case.

(h) Notwithstanding the foregoing provisions of this paragraph, the PRC or any member thereof may at its (or his) discretion, forward any case of a party, who has had a formal hearing or where same has been waived, to the NPDRB for further consideration. However, a member of the PRC may exercise the individual right to refer a case to the NPDRB only when he questions a matter within his area of responsibility. The PRC shall give the party or his counsel notice of such re-

ferral with a brief statement of reasons therefor.

(i) In a case where there is no action of the PRC as such, because each of the members is in disagreement with the others, and following consultation by the members it appears that such disagreement is irreconcilable, the case shall, if the party has had a formal hearing or has waived same, be referred to the NPDRB with the proposed action of each member with a statement of reasons for each such action, and the party or his counsel shall be given notice of such referral, the proposed actions, and the reasons therefor; otherwise, the case shall be referred directly to a PEB for a formal hearing.

§ 725.606 Rebuttals.

When the party concerned has been notified of proposed substitute findings by the PRC, in accordance with § 725.605(d), he or his counsel shall be allowed 5 days, excluding Saturdays, Sundays, and holidays, to file a rebuttal after receipt of notification. The notification transmitted to the party by the PRC of its proposed substitute findings shall include a brief statement of the reasons for such proposed findings and, if any, conflicting proposed substitute findings made by an individual member of the PRC. In cases with two or more sets of proposed substitute findings, the statement in rebuttal shall specify the findings not concurred in, setting forth the factual and legal basis for nonconcurrence. The party may also propose alternate findings acceptable to the party or some other relief. Failure to submit a statement in rebuttal within the time allowed shall be construed to mean that the PRC's substitute findings are acceptable to the party. The record must contain proof that the party or his legal representative received notification of action under § 725.605(d) or evidence that a reasonable effort was made to provide such notification. For reasonable cause upon request, the time for filing a rebuttal may be extended at the discretion of the PRC.

§ 725.607 Preparation and authentication of records.

Action by the PRC on the record of proceedings of PEB's shall be prepared in appropriate form and shall be signed by all members acting on the case and the Recorder.

§ 725.608 Procedure in Servicemen's Readjustment Act cases.

The PRC shall act in cases arising under 10 U.S.C. section 1554 in advisory capacity only and, in such capacity, shall recommend to the Secretary of the Navy that the findings of a board established under such act be approved or disapproved, or that orders be issued in the case. In the event that other than approval is recommended, the reasons therefor shall be stated. The action of the PRC shall otherwise be prepared in appropriate form and shall be signed by each member acting on the case and by the Recorder. It shall be promptly transmitted to the Judge Advocate General.

§ 725.609 Expedited disability separation.

(a) In cases processed under § 725.313 the PRC must insure that the following criteria are met:

(1) The party is unfit for duty and not likely to return to a duty status.

(2) The party's disability was incurred in line of duty and is not due to his own misconduct.

(3) The party's condition is of such nature that functional impairment will be ratable at 30 percent or more.

(4) Unless the functional impairment as it exists at the time of adjudication is 100 percent, the party shall not be permanently retired under the provisions of § 725.313 but his name shall be placed on the TDRL.

Subpart G—Naval Physical Disability Review Board

§ 725.701 Convening authority.

The Secretary of the Navy shall convene the Naval Physical Disability Review Board.

§ 725.702 Function and jurisdiction.

The NPDRB is constituted to review and report upon cases referred to it,

pursuant to § 725.605, and cases arising under the provisions of Title 10 of the United States Code, section 1554. The Board shall have the same powers as exercised by, or vested in, the Board whose action is being reviewed. The Board shall consider the issues before it, in conformity with accepted medical principles, pertinent law and regulation, and established personnel policies.

§ 725.703 Composition.

The NPDRB shall consist of five commissioned officers as members, three of whom shall be nonmedical officers and two of whom shall be medical officers, plus a Recorder. In addition, except in cases arising under 10 U.S.C. 1554, there shall be designated a counsel for the Board and appellate counsel for the party. The counsel and appellate counsel will be required to act, however, only in cases where their services are requested by the president, or by the party whose case is being considered.

§ 725.704 Qualifications.

Each member of the NPDRB shall be carefully selected for his competence, maturity, experience, and soundness of judgment. The Recorder may be either a commissioned officer or a civilian in the employ of the Government. When the party whose case is being considered is a member or former member of the Navy, the nonmedical members shall be officers of the Navy. When the party is a member or former member of the Marine Corps, the nonmedical members shall be officers of the Marine Corps. When the party is a member or former member of a Reserve component, at least a majority of the members of the Board present and acting in the case shall be Reserve officers unless otherwise authorized by the Secretary of the Navy. The appointing order convening the NPDRB may list more than five members, in which case the following provision shall be included in the order: "Only five members of this Board, three of whom shall be nonmedical members and two of whom shall be medical members, are empowered to act in any one case." The senior officer shall act as president.

§ 725.705 Rank of members.

Although any commissioned officer is eligible for appointment to the NPDRB, care should be taken to avoid great disparity in rank and experience. In no event may rank be permitted either to inhibit or influence junior members in expressing their opinions or in voting.

§ 725.706 Seniority.

Whenever practical, at least a majority of the Board who act on a case shall be senior to the party. In the absence of objection by the party, the seniority of the members of the Board shall be considered as waived.

§ 725.707 Limitation on members.

(a) No medical officer shall act as a member of the NPDRB who has had direct charge of the case of the party or who was a member of the Medical Board which reported on the party. No member of a PEB, the PRC, Naval Retiring Board, or Board of Medical Survey, which acted in the case of the party, shall act as a member of the NPDRB in the same case.

(b) Officers of the Dental Corps, Medical Service Corps, or Nurse Corps are not eligible for membership as medical members of the NPDRB. They may be appointed and sit as nonmedical members only when the party before the Board is a member of the same Corps.

§ 725.708 Counsel for the Board.

When counsel for the Board is required as provided in § 725.703, he shall be a competent, mature, commissioned officer of sound judgment. He shall be a member of the bar of a Federal court or of the highest court of a State. He must be familiar with Board procedures and with the laws, regulations, and instructions governing physical disability retirement and separation and physical standards.

§ 725.709 Appellate counsel for the party.

(a) Appellate counsel for the party shall be a member of the bar of a Federal court or of the highest court of a

State and shall be selected on the basis of his competence, maturity, experience, and soundness of judgment, as well as his knowledge of the laws, regulations, and instructions governing retirement or separation for physical disability.

(b) In proceedings before the NPDRB the party concerned may be represented by civilian counsel, if provided by himself or his representative at no expense to the Government or by military counsel of his own choice, if personally available. In such case, the designated appellate counsel for the party, unless assistance is requested by the party or his chosen counsel, shall not act in the case.

§ 725.710 Procedure.

(a) In cases arising under 10 U.S.C. 1554, the NPDRB will review and report upon the findings and decisions or recommendations of any PEB, Naval Retiring Board, or Board of Medical Survey because of which any person, while serving as an officer of the naval service, has been retired or released from active duty without pay for disability. The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will report to the Board the cases of personnel requesting and entitled to review in accordance with § 725.711. Upon receipt of authorization for review, the Recorder of the Board shall assemble all records available in the case and notify party and counsel (if any) of the time and place of hearing. Such notice shall be placed in the mails at least 30 days in advance of the scheduled time of hearing. The proceedings of the Board under this paragraph shall be conducted in accordance with the instructions and regulations which governed the proceedings of the Board whose action is being reviewed, except that:

(1) Physical examination of the individual is not mandatory; (2) the Board will not make a preliminary report; (3) the medical members will not be subject to examination; and (4) the medical members will not submit a report. The Board will meet in open session for the hearing of a case and, at the conclusion thereof, shall meet in closed session for its deliberations and determinations. Party shall be entitled to appear in person before the Board during open sessions of the Board. He shall be entitled to be represented by counsel of his own choosing, except that no expense thereto will be borne by the Government. A party who, after due notification of the time and place of hearing, fails to appear at the appointed time, is deemed to have waived his right to appear. Party or counsel for the party may waive in writing his right of appearance.

(b) In cases referred to the NPDRB pursuant to § 725.605, the Board shall initially review each case on the record submitted to it. If the Board arrives at prima facie findings which concur in findings of the PEB, and such findings of the PEB have not been rebutted by the party, such findings are to be considered not detrimental to the rights of the party and shall, without further proceedings, be forwarded for final action of the Secretary (JAG). If the prima facie findings of the Board are in any way detrimental to the rights of the party (see § 725.237), the party shall be so apprised thereof and of his right to a hearing before the Board. Where the party then requests to be present, either personally at no expense to the Government, or through counsel, a hearing shall be held. A party who, after due notification of the time and place of the hearing, fails to appear at the appointed time, is deemed to have waived his right to appear. Party or counsel for the party may waive in writing his right of appearance. At such hearing, the Board will receive such relevant evidence, either written or oral, as the party desires to offer. In the event that the party does not desire a hearing, he may submit such additional evidence, arguments, or briefs as he may desire, which will then be considered along with all the other evidence of record. Upon concurrence of the majority of the membership, the Board may cause a record to be returned to a medical board or a PEB for the same reasons that it may be returned by the PRC.

(c) Whenever a case referred to the NPDRB, pursuant to § 725.605, is received within 30 days or less of an impending mandatory separation or retirement date, the Board shall expedi-

tiously review such case on the record submitted to it and any other evidence received prior to the time of review, forwarding its findings as soon thereafter as possible.

§ 725.711 Request for review of retirement or separation without pay for physical disability.

Any officer or former officer retired or released from active service for physical disability without pay pursuant to the recommendation of a PEB or Board of Medical Survey, desiring a review of his case, may request such review. Such a request for review shall be in writing and shall be submitted to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. No request for review will be granted under these regulations unless received in the Department of the Navy within 15 years after the date of retirement or separation. Upon receipt of a request for review, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall note thereon the time of receipt and will, when it appears that the NPDRB has jurisdiction to review the case, transmit the request for review and any supporting documents to the president of the Board with the authorization for review.

§ 725.712 Oath.

Members of the NPDRB convened to act in any case presented to it by proper authority shall be sworn as follows: "You, and each of you, do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of ———— about to be examined by the Board. So help you God" (The sentence "So help you God" is omitted in affirmation).

§ 725.713 Challenges.

No challenge to the members of the NPDRB, other than a challenge for cause, will be entertained by the Board. Procedure for challenging shall be the same as for members of a Court of Inquiry.

§ 725.714 Evidence.

The NPDRB shall consider all documentary evidence transmitted to it by proper authority. The Board, in addition, may require and examine such records as may be in the files of the Department of the Navy which relate to the issues before the Board. All evidence having a probative value as to the determination of issues before the Board may be considered without limitation by the restriction of the technical rules of evidence. The Board shall receive any additional relevant evidence party may present. Witnesses shall be permitted to present evidence either in person or by affidavit. All witnesses before the Board shall be subject to cross-examination by party, his counsel, or counsel for the Board. Members of the Board may question witnesses. Party may submit a statement, either oral or in writing, to the Board, may take the stand as a witness, or may be called as a witness by the Board. All oral testimony shall be taken under oath or affirmation administered by the Recorder in the manner set forth in Appendix "A." Not less than 3 days prior to the date set for hearing, all records and papers pertaining to the case shall be made available to party or his counsel, as appropriate, who shall have the right to inspect such records and papers, to have copies made if practicable, and to make notes therefrom. Party or his counsel in writing may waive the right to such 3-day inspection period. Party, if available, may be examined physically by the medical members of the Board or by a medical officer detailed by the Chief, Bureau of Medicine and Surgery. The report of such examination, either oral or in writing, may be placed before the Board in the same manner as other evidence.

§ 725.715 Continuances.

The NPDRB may continue a hearing on its own motion or at the request of party or his counsel if a continuance appears necessary to insure a full and fair hearing.

§ 725.716 Findings or opinions and decisions or recommendations.

The findings or opinions of the NPDRB, in cases arising under 10 U.S.C. 1554, shall relate to the time the officer was retired or released from active duty and shall contain a

statement showing whether the decisions or recommendations of the board being reviewed are affirmed or reversed. The findings or opinions and decisions or recommendations of the NPDRB shall be made in closed session in each case. Findings, opinions, recommendations, or decisions, as appropriate, shall be made in accordance with phraseology prescribed at the time of the officer's retirement or release.

§ 725.717 Review of PEB action.

(a) In cases arising under 10 U.S.C. 1554, phraseology as required under § 725.519 to § 725.525, as appropriate, shall be used. However, the recommended findings shall relate to the date of retirement or release from active service and the record shall so state. In the event a case is referred to the NPDRB by competent authority wherein an officer or former officer was retired or separated prior to October 1, 1949, the phraseology shall conform to that required by regulations existing at the time of such retirement or separation.

(b) In cases referred to the NPDRB pursuant to § 725.605, the Board shall render an advisory opinion for the Secretary of the Navy as to the appropriate recommended findings upon which it considers that final disposition should rest.

§ 725.718 Minority opinions, findings, recommendations, or decisions.

Any dissenting member of the NPDRB shall make a minority report on those particulars in which he dissents. Such report shall be included in the record of proceedings of the Board.

§ 725.719 Proceedings of the Board.

(a) The proceedings of the NPDRB shall be conducted in accordance with instructions set forth in this chapter and in accordance with the JAG Manual, ch. IV, insofar as is practicable.

(b) The officer senior in precedence among the members of the NPDRB considering any one case shall act as the presiding officer of the Board. He shall take appropriate action to preserve order in all sessions of the Board and to insure that the proceedings are conducted in a dignified and judicial manner. He will rule upon all interlocutory questions except challenges. His ruling or interlocutory questions may be objected to by any other member of the Board (and such objections will be decided by a majority vote of the Board members in closed sessions of the Board), and he will speak for the Board in announcing its recommended findings and the result of any vote upon challenge or other interlocutory question.

§ 725.720 Preparation of record of proceedings.

The record of proceedings of the NPDRB shall be prepared as prescribed for Courts of Inquiry in the JAG Manual, insofar as practicable. The record shall include verbatim transcript of the testimony of all witnesses, all arguments by counsel, and such original documents (or certified copies thereof) presented to the Board as evidence. In those cases where a full and fair hearing is held, a copy of the notification of such hearing shall be appended to the record. The record of proceedings shall be authenticated by the Recorder and by the senior member of the Board in that order, except that in the absence of the senior member the record may be authenticated by any other member who acted in the case.

§ 725.721 Forwarding of record of proceedings.

The record of proceedings of the NPDRB in cases arising under 10 U.S.C. 1554 shall be forwarded promptly to the Judge Advocate General for transmission to the Secretary. In cases considered pursuant to § 725.605, the record of proceedings shall be promptly forwarded to the Secretary of the Navy (JAG).

Subpart H—Final Action, Relief From Final Action, and Other Actions on the Record

§ 725.801 Final action.

(a) The findings and the recommendations authorized to be made by these regulations have no legal effect

until approved by the Secretary of the Navy. The administrative finalization of each case processed under these regulations will be effected in accordance with the final disposition directed by the Secretary and promulgated by the Judge Advocate General.

(b) No findings, recommendations, decisions or modifications thereof, made under this Manual, shall be considered as conclusive or final, or not subject to modification by competent authority, until final disposition of the case pursuant to action of the Secretary has been effected. However, the recommended findings of a formal PEB, or by the NPDRB after a formal hearing, based on observation or the testimony of witnesses adduced at the hearing, will not normally be modified on any review (other than by the Secretary) without further evidence unless clearly erroneous, and due regard shall be given to the opportunity of the board members to observe the party and judge the credibility of witnesses.

§ 725.802 Action by the Secretary of the Navy.

(a) Excepting those cases acted upon pursuant to the authority delegated in § 725.803, all cases processed under these regulations shall be promptly referred to the Secretary for consideration and direction of final disposition. Generally, the Secretary, in his discretion, may approve findings and direct disposition consistent with the findings approved; disapprove findings and direct disposition appropriate under the circumstances; make independent determinations and direct disposition consistent with the determinations made; direct further proceedings without approving or disapproving findings; or direct final disposition appropriate under the circumstances without approving or disapproving findings. Action upon a case being processed under 10 U.S.C. 1554 will be in accord with the actions which could have been taken upon the proceedings being reviewed.

(b) Each case referred to the Secretary will be reviewed by the Judge Advocate General for an opinion as to whether the proceedings were conducted in accordance with applicable regulations, the party was accorded all the rights to which he was legally entitled, and the findings of record are legally supportable.

§ 725.803 Delegation of authority to act for the Secretary.

(a) Excluding cases arising under 10 U.S.C. 1554 and cases processed solely for the purpose of making an election under former section 411 of the Career Compensation Act of 1949, the Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General, acting for the Secretary, may approve the findings of the PRC or the NPDRB and direct final disposition consistent with the findings approved when:

(1) The PRC concurs in the unanimous or the majority findings of a PEB;

(2) The PRC makes substitute findings which are not substantially detrimental to the party;

(3) The PRC makes substitute findings which are acceptable to the party;

(4) The PRC makes findings or concurs in findings which result in the temporary retirement of a party in terminal cases (see § 725.312);

(5) The NPDRB (or a majority thereof) concurs in the findings of the PRC;

(6) The NPDRB (or a majority thereof) concurs in the unanimous or the majority findings of the PEB which are acceptable to the party.

(b) The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General, acting for the Secretary, may direct final disposition of a case without approval or disapproval of findings when:

(1) The PRC has recommended that no action be taken in order that the party may be continued on active duty in a limited duty status; or

(2) The PRC has recommended that no action be taken in order that the party may be retired or separated for reasons other than because of physical disability.

(c) The authority delegated in paragraphs (a) and (b) of this section will not be exercised unless review of the case discloses that the proceedings

were conducted in accordance with applicable regulations; the party was accorded all the rights to which he was legally entitled; and the findings to be approved are legally supportable. If review discloses a material defect, the record of proceedings will be returned promptly to the PRC (or the NPDRB) for such further proceedings as are appropriate in the circumstances.

(d) The authority conferred by paragraphs (a) and (b) of this section is permissive and shall not prevent the referral of any case to the Secretary for consideration and direction of final disposition.

§ 725.804 Referred to NPDRB by JAG.

Whenever the Judge Advocate General, in reviewing a case pursuant to the authority delegated in this chapter, considers that the basis for the recommended action or actions is not sufficiently certain to justify the making of determinations on the case for the Secretary, he may refer the case to the NPDRB for consideration, advice, and recommendation.

§ 725.805 Effective date of retirement.

(a) Unless the final disposition directed in a case specifies an effective date of retirement pursuant to the authority contained in 10 U.S.C. 1221, the effective date of retirement because of physical disability (either temporary or permanent) shall be specified by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. The date specified by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall be the date upon which all administrative procedures incident to retirement are completed, but shall be no later than the first day of the month following the month during which final disposition was directed.

(b) The Judge Advocate General, the Deputy Judge Advocate General, and any Assistant Judge Advocate General is hereby authorized, except as the Secretary of the Navy may otherwise direct, to take action for the Secretary under the provisions of § 725.312 to specify an effective date for the retirement for permanent physical disability or placement on the TDRL of parties of the naval service earlier than the date otherwise provided, as recommended by the PRC pursuant to the provisions of this Manual.

§ 725.806 Retirement for other reasons.

A member (who meets all qualifications for retirement because of physical disability but who is also qualified for retirement or separation for other reasons), prior to the effective date of his retirement pursuant to these regulations, may request that no action be taken on his retirement because of physical disability in order that he may be retired or separated for other reasons. Such a request will be addressed to the Secretary and forwarded via the PRC for comment and recommendation. Normally a member will not be retired because of physical disability if he is eligible for retirement or separation for other reasons and makes a timely request for retirement or separation and fully understands the consequences of his election.

§ 725.807 Withdrawal of retirement proceedings.

The Chief of Naval Personnel, Commandant of the Marine Corps, or Chief, Bureau of Medicine and Surgery, may, for good and sufficient reason and with the consent of the party concerned, withdraw any case from the DES. However, if a party's appearance before a PEB has been specifically ordered by the Chief of Naval Personnel or the Commandant of the Marine Corps, the case may be withdrawn only upon approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

§ 725.808 Relief from final action.

Relief from the executed final disposition directed in a case processed under these regulations may be granted only upon the grounds and in the manner hereafter set forth:

(a) *Errors of promulgation.* Clerical errors in the promulgation of the final disposition directed in a case may be corrected by the Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate

General, at any time, upon his own initiative, upon the petition of the individual concerned (or his legal representative), or upon the petition of any cognizant authority of the Naval Establishment. If the correction intended does not change the nature of the disposition directed or the percentage of disability applicable for purpose of computing retired pay, correction may be made without notice. Otherwise, the individual concerned (or his legal representative) must be given reasonable notice of the correction intended and afforded an opportunity to submit a statement or other evidence in rebuttal. A petition under this subparagraph should be addressed to the Judge Advocate General and should set forth the alleged error with a statement of the correction desired. No notice is required if the intended correction is beneficial to the party.

(b) *Relief involving the cancellation of orders.* (1) Mistake of law is a basis for relief from final action. This includes: A failure to grant the party a full and fair hearing if the party made a timely demand for such a hearing; a directed disposition, even though executed, which was without authority; or a decision which, although executed, is contrary to the great weight of the evidence of record. Fraud or misrepresentation of a material fact affecting the final dispcsition of the case and substantial new evidence are also grounds for relief.

(2) A showing that the disability suffered by an individual, in fact, was different from that reflected by the record of proceedings conducted in his case does not, in itself, affect the validity of the retirement proceedings or the orders based thereon.

(c) *Relief involving only a change in the nature or degree of disability reflected by an order of retirement.* An otherwise valid order of retirement may be modified to the extent that the percentage of disability contained therein may be changed upon a showing that the nature or degree of disability suffered by a party at the time of his retirement was, in fact, other than that reflected by the record of proceedings conducted in his case. Relief of this nature may be granted upon a petition supported by evidence; which by due diligence could not have been presented prior to final disposition; which relates to a fact in existence at the time of final disposition; which is not merely cumulative or corroborative of matter considered at the time of final disposition; and which would have warranted the assignment of a higher percentage of disability if presented prior to final disposition.

(d) *Procedure for seeking relief.* Request for relief on the grounds set forth in paragraphs (b) and (c) of this section may be made by the individual concerned, by his legal representative or counsel, or by any cognizant authority of the Naval Establishment. Request will be by petition filed within 5 years from the effective date of the disposition complained of (except when discharge has been executed, in which case petition should be directed to the Board for Correction of Naval Records) addressed to the Secretary of the Navy, and forwarded via the PRC. No particular form is required. However, the petition must set forth the grounds for requesting relief and the relief desired; and, if the petition is based upon evidence which is not of record in the Department of the Navy, the evidence upon which it is based must be forwarded as an enclosure.

(e) *Action by the PRC.* All petitions submitted pursuant to paragraph (d) of this section will be considered by the PRC for the purpose of making recommendations relative to whether the relief requested (or any other relief) should be granted. If a petition to be considered was not submitted by the individual concerned (or his legal representative or counsel), the individual concerned (or his legal representative or counsel) will be given reasonable notice of the matter presented by the petition and afforded the opportunity to submit a statement or other evidence in rebuttal. All petitions considered and the action of the PRC thereon will be promptly forwarded to the Judge Advocate General for review and action or for referral to the Secretary.

(f) *Action by the Judge Advocate General.* The Judge Advocate General will review each petition considered by the PRC and either will take action

for the Secretary or will refer the matter to the Secretary for action with comments and recommendations.

(g) *Delegation of authority to act for the Secretary of the Navy.* The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General, in his discretion, may take action for the Secretary on petitions submitted pursuant to paragraph (d) of this section, if he concurs in the unanimous recommendations made by the PRC. All other cases will be referred to the Secretary for action. The authority herein conferred is permissive only and will not preclude the referral of a case to the Secretary for action incident to the specific direction of the Secretary or the election of the Judge Advocate General.

(h) *Action by the Secretary of the Navy.* In acting on a petition referred for consideration, the Secretary, in his discretion, may deny relief, set aside the final disposition directed in a case and direct further disability evaluation proceedings, or direct such action as is necessary to effect the relief requested or any other relief deemed appropriate.

(i) *Effect of filing a petition for relief and action thereon.* The filing of a petition for relief shall not affect the directed disposition of an individual or suspend its operation until and unless the Secretary of the Navy (or authority acting for the Secretary) shall so direct. Neither the action of the Secretary of the Navy (or authority acting for the Secretary) upon a petition for relief, nor any action taken by him pursuant to the proceedings on the reopening of a case, shall operate to extend the time for application for review of the original disposition by a statutory board.

Subpart I—Physically Restricted Personnel

§ 725.901 General considerations.

(a) With the consent of the member, particularly one with over 18 but less than 20 years of active service, the Secretary will entertain deferring the disposition of a member who, although unfit because of physical disability, can still perform useful service with appropriate assignment limitation. A member continued on active duty in accordance with the provisions of this chapter must be unfit because of physical disability with a basically stabilized condition, or one in which accepted medical principals indicate a slow progression of the disabling condition. He must be able to maintain himself in a normal military environment, without adversely affecting his health or the health of other members, or without requiring an inordinate amount of medical care. In addition, the member must request in writing that he be retained.

(b) Members, particularly those with over 20 years of active service, will not be continued on active duty solely to increase their monetary benefits, nor will they be continued unless their employment is justified as being of value to the naval service.

(c) The medical member of the PRC shall advise whether duty in a limited assignment status will or will not jeopardize the member's health or that of other members of the Service. Further, the officer assigned as a member of the PRC by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall certify (for the Chief of Naval Personnel or the Commandant of the Marine Corps) whether the member's services can or cannot be utilized in a limited assignment status, and, if so, whether his services can or cannot be considered to contribute to the effectiveness of the Service. The PRC shall recommend to the Secretary whether to retain the member in a limited duty assignment.

(d) Consideration similar to that given members on active duty shall be afforded members of the Naval and Marine Corps Reserve on inactive duty, except that the certification of the nonmedical member of the PRC shall refer to the utilization of the member in an effective limited assignment under mobilization conditions.

§ 725.902 Disposition of physically restricted members.

A member continued under these provisions shall be closely observed to assure that further continuance, or

conversely separation, is consonant with the best interests of the Service and the member. When a member becomes unable to perform his duties in a limited duty assignment, he shall be admitted to a Naval Hospital for observation, treatment, and appropriate disposition.

Subpart J—Disposition of Members Whose Names Are Carried on the Temporary Disability Retired List

§ 725.1001 Periodic physical examination.

(a) The law provides that the maximum time that a member's name can be carried on the TDRL in a pay status is 5 years. A member's name can be removed from the TDRL at any time, whenever a report of physical examination indicates that maximum improvement has been achieved or that the disability is of a permanent nature and not likely to undergo a significant change. Further, the law requires that members, whose names have been placed on the TDRL, shall be given physical examinations at least once every 18 months. The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will issue appropriate orders for such examinations.

(b) Failure of a member to report for any periodic physical examination, unless he furnishes a report of a current acceptable medical examination, may result in the termination of his disability retired pay and may later be considered as showing an intent on the member's part to abandon benefits. If the member shows good cause for failure to report, the payments may be reinstated and may be made retroactive for a period of not over 1 year.

(c) First notification to report for a scheduled periodic physical examination may be by regular mail. However, when the party fails to report as directed, and a second notification must be forwarded, certified or registered mail (with return receipt) shall be used and the member shall be specifically informed in such second notification that failure to report may prejudice his disability retired pay and may later be considered as manifesting an intent to abandon benefits, resulting in removal of his name from the TDRL.

(d) Members who have waived retired pay, in order to receive compensation from the Veterans' Administration, are still members of the naval service, and are required to undergo periodic physical examinations when ordered by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Failure to report for physical examinations as ordered may result in the suspension of their retired pay account. His retired pay account, once so suspended, will not automatically be reopened when the member later wishes to reelect to receive retired pay because of a decrease in, or termination of, his Veterans' Administration compensation.

(e) Members who are ordered to submit to a physical examination will be reimbursed for travel performed upon submission of a claim and presentation of their orders properly endorsed.

(f) The periodic physical examination should be conducted with the same scrupulous care and thoroughness as the examinations accomplished preliminary to appearance before a Medical Board. This examination should include an evaluation of any disabilities, which have been incurred or become manifest since temporary retirement, as well as the disabilities for which temporarily retired.

(g) Whenever inpatient observation is desirable or necessary for a proper evaluation, admission and retention as an inpatient for a period of 10 days is authorized. This length of inpatient observation may be extended upon the authorization of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. It is particularly important that admission as an inpatient be effected for proper evaluation or neuropsychiatric cases.

(h) The report of periodic physical examination shall be prepared in letter or narrative summary form. It should contain an accurate interval history and a report of all clinical evaluations and laboratory studies. This report of periodic physical examination need not contain a review of all previous examinations, since these are already matter of record. However,

pertinent previous evaluations may be referenced and attention invited to them.

(i) The report of periodic physical examination should contain a statement as to whether personal appearance of the member before a PEB would be deleterious to his physical or mental health, and whether disclosure of information to the member relative to his physical or mental condition would adversely affect his physical or mental health.

(j) The report of periodic physical examination requires only signature by the medical officer designated to conduct the examination and, unless the orders for the examination otherwise direct, should be transmitted to the ONDE via the commanding officer.

§ 725.1002 Reevaluation of members detained by civil authorities.

The procedures contained in this Manual are subject to modification whenever the party is undergoing confinement by civil authorities or is hospitalized in an institution under State or local control. The following procedures may be utilized whenever the circumstances of the member's confinement or hospitalization indicate that he will be unable to respond to the orders calling for his appearance for physical examination or PEB hearing:

(a) The report of the medical officer or medical assistant serving the confinement facility or institution in which the member is hospitalized may be submitted for the periodic physical examination.

(b) The party will be informed by a notice in writing that his case will be considered by a PEB 30 days from the date of said notice; that unless he waives his right to a formal hearing he will be afforded such hearing on that date but, in the event he fails or is unable to appear on that date, such hearing will be held in his absence with representation by counsel; i.e., by the appointed counsel named in the notice or by civilian counsel of his choice provided at his own expense. In the case of a party who is found to be mentally incompetent, the provisions of §§ 725.510 and 725.517 apply.

§ 725.1003 Termination of temporary disability retirement.

(a) If, as a result of any periodic physical examination, it is determined that the disability of the member concerned has become stabilized; i.e., that no further improvement or deterioration of the disability may normally be expected within the period the member can be carried on the TDRL, one of the following recommendations as to the member's disposition will be made:

(1) Permanent retirement;

(2) Discharge with or without severance pay; or

(3) Fit for return to duty.

(b) In the event the member is to be retained on the TDRL, he will continue to be examined at intervals of 18 months. However, he must be finally reevaluated before the end of the 5-year period when final disposition must be made of his status.

(c) If his disability is ratable at less than 30 percent but continues to render him unfit for duty, and if the member has served less than 20 years of active duty (and will not be entitled to retired pay or retainer pay by other provisions of law), he will be discharged with severance pay.

(d) If the member has recovered from his disability to a degree that he is fit to perform his duties, the following may apply:

(1) An enlisted member of a Regular component, subject to his consent, will be reenlisted in his Regular component; an officer in a Regular component, subject to his consent, will be recalled to active duty and, as soon as practicable, be reappointed to the active list of his Regular component, even if this means that there will be a temporary increase in the number of officers authorized for his grade.

(2) A member of a Reserve component, subject to his consent, will be reappointed or reenlisted, as the case may be, in his Reserve component.

§ 725.1004 Appointment, reappointment, enlistment, or reenlistment.

Any such appointment, reappointment, enlistment, or reenlistment shall be in a rank, grade, or rating not lower than the rank, grade, or rating

permanently held by the member at the time his name was placed on the TDRL, and may be in the rank, grade, or rating immediately above the rank, grade, or rating permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank, grade, or rating, or will be credited with such years of service as the Secretary of the Navy may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his name on the TDRL.

§ 725.1005 Regular officer.

An officer in a Regular component shall have his disability retired pay terminated on the date of his recall to active duty and his status on the TDRL terminated on the date of his reappointment on the active list.

§ 725.1006 Regular enlisted member.

An enlisted person of a Regular component shall have both his status on the TDRL and his disability retired pay terminated on the date of his reenlistment in the Regular component of which he was a member before being placed on the TDRL.

§ 725.1007 Reserve officer or enlisted member.

A member of a Reserve component, whether officer or enlisted person, shall have his status on the TDRL and his disability retired pay terminated on the date of his reappointment or reenlistment in a Reserve component, as the case may be.

§ 725.1008 Fleet Reserve or Fleet Marine Corps Reserve members.

(a) A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who is found fit for duty shall, with his consent, resume his status in the Fleet Reserve or Fleet Marine Corps Reserve in the grade held by him when he was placed on the TDRL, or the next higher grade if considered qualified therefor in view of 10 U.S.C. 1211(f).

(b) A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who has less than 20 years' service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C. chapter 61, shall be given an opportunity to request that his name be removed from the TDRL and that his status in the Fleet Reserve or Fleet Marine Corps Reserve be resumed.

§ 725.1009 Member with less than 20 years' active duty eligible for Fleet Reserve or Fleet Marine Corps Reserve.

A member on the TDRL who has less than 20 years' service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C. ch. 61, shall be given the opportunity to request transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he has completed 20 years or more of active service under 10 U.S.C. 6330.

§ 725.1010 Reserve officer or enlisted member who has completed 20 years' service under 10 U.S.C. 1332.

A member on the TDRL who has at least 20 years of service computed under 10 U.S.C. 1332 and who, as a result of a periodic physical examination, is determined to be entitled to severance pay under 10 U.S.C. ch. 61, shall be given an election, instead of being separated, to request transfer to the inactive status list under 10 U.S.C. 1209 and 1335.

§ 725.1011 Disposition when member does not consent to reappointment or reenlistment.

If a member does not consent to his reappointment or reenlistment, his status on the TDRL and his disability retired pay shall be terminated as soon as is practicable.

Appendix—List of Forms

NAVSO 6100/9 Cover and Processing Time Sheet.

NAVSO 6100/9a Cover and Processing Time Sheet—Revaluation.

NAVSO 6100/16 Proceedings and Findings of Physical Evaluation Board.

NAVSO 6100/17 Recommended Findings of Physical Evaluation Board.

NAVSO 6100/18 Notification to Party of Formal Hearing.
NAVSO 6100/18A Notification to Party of Formal Hearing in Absentia.
NAVSO 6100/18B Notification to Legal Representative of Formal Hearing.
NAVSO 6100/19 Disability Counseling Worksheet.
NAVMED 1900/1 Certificate Relative to a Full and Fair Hearing.

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Sec.
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726.10 Authority of the Judge Advocate General to issue implementing instructions.
726.11 Chapter 11, 37 United States Code.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601-604, 1001; 32 CFR 700.206 and 700.1202.

SOURCE: 35 FR 13083, Aug. 18, 1970, unless otherwise noted.

NOTE: This part is Chapter XV of the Manual of the Judge Advocate General of the Navy.

§ 726.1 Purpose.

This part prescribes the regulations necessary to carry out 37 U.S.C. Chapter 11, "Payments to Mentally Incompetent Persons".

§ 726.2 Scope.

37 U.S.C. Chapter 11 grants authority for the designation of a trustee (without appointment in judicial proceedings of a committee, guardian, or other legal representative by a court of competent jurisdiction) to receive the active-duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, otherwise payable to:

(a) Members of the Navy or Marine Corps who are on active duty (other than for training) or who are on a retired list, and

(b) Members of the Fleet Reserve or Fleet Marine Corps Reserve who are found by competent medical authority to be mentally incapable of managing their affairs. In this part they shall be referred to as "member" or "members."

§ 726.3 Authority to designate trustees to receive Federal monies.

(a) The Judge Advocate General; the Deputy Judge Advocate General; and any Assistant Judge Advocate General of the Navy; are delegated authority by the Secretary of the Navy to designate the person or persons who may receive active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, otherwise payable to a member of the naval service who, in the opinion of competent medical authority, is mentally incapable of managing his affairs, and for whom no committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction.

(b) The Judge Advocate General has granted to the Assistant Judge Advocate General (Civil Law) [hereafter referred to in this part as the AJAG(CL)] authority to fully administer the Fiduciary Affairs Branch of the Administrative Law Division of the Office. This Branch provides for the designation, supervision, and discharge of trustees for members of the naval service found to be incapable of managing their affairs. All questions and other matters pertaining to trustees for incompetent members should be forwarded to the AJAG(CL); the Director, Administrative Law Division; or the Head, Fiduciary Affairs Branch.

[41 FR 26862, June 30, 1976]

§ 726.4 Procedure for medical examinations.

(a) *Convening of medical board upon notification by AJAG(CL).* When a request for trustee designation has been received by the AJAG(CL), he shall examine the sufficiency of the request or recommendation for the designation of a trustee. If it is sufficient he shall request:

(1) The commanding officer of the naval hospital to which the alleged mental incompetent may most conveniently be referred for examination; or

(2) In case of members receiving medical treatment by a hospital or other activity of the Department of the Army, the Department of the Air Force, the Department of Health and Human Services, or the Veterans' Administration, the Commanding officer or head of the hospital or activity or the appropriate commandant of the naval district; or

(3) In cases of members receiving medical treatment by a non-Federal hospital or other institution, the appropriate commandant of the naval district to convene a board of medical officers or physicians as required by 37 U.S.C. 602 to examine the member in order to determine whether he is capable of handling his affairs.

(b) *Members in naval hospitals or ordered before medical boards*—(1) *Members in naval hospitals presenting mental disorders and who are not immediately due for disposition under 10 U.S.C. 1201-1221.* Whenever it appears to the commanding officer of a naval hospital that a member undergoing treatment therein may be mentally incapable of managing his affairs, he shall, unless the member is to be immediately presented to a medical board preliminary to his appearance before a physical evaluation board, convene a medical board of not less than three medical officers or physicians under the jurisdiction of the Secretary of the Navy, one of whom shall be specially qualified in the treatment of mental disorders, to inquire into the mental competency of such member. The board shall be appropriately conducted in accordance with 37 U.S.C. 602 and shall render a definite opinion as to whether or not the member is capable of managing his own affairs.

(2) *Members presenting mental disorders and who are ordered before medical boards preliminary to their appearance before a physical evaluation board.* Whenever the case of any member presenting, or alleged to present, a mental disorder is referred to a medical board preliminary to appearance before a physical evaluation board, the convening authority shall ensure that the board is constituted as set forth in 37 U.S.C. 602. In the event that a medical board not so constituted should determine that any member whose case is being considered presents a significant mental disorder, it shall suspend its proceedings and advise the convening authority in order that a properly constituted medical board may be convened. The board, convened in accordance with 37 U.S.C. 602, shall render a definite opinion as to whether or not the member is capable of managing his own affairs.

(3) *Members on the temporary disability retired list.* Whenever a member on the temporary disability retired list presents, or is alleged to present, or has previously presented at the time of his last examination, a mental disorder, he shall be referred to a command for a periodic physical examination by orders of the Chief of Naval Personnel or the Commandant of the Marine Corps pursuant to paragraph 0901 of the Disability Separation Manual. The receiving command shall convene a board as required by 37 U.S.C. 602. The board shall render a definite opinion as to whether or not the member is capable (or continues to be incapable) of managing his own affairs.

(c) *Action by the convening authority.* (1) Upon receipt of information that a member of the naval service is alleged to be mentally incapable of handling his affairs, a board of not less than three medical officers or physicians, (one of whom shall be specially trained in the treatment of mental disorders), shall be convened to determine if the alleged mental incompetent is capable of managing his own affairs. Such a board shall also be convened when requested to do so by proper authority or upon receipt of information that a member of another uniformed service in a naval hospital is alleged to be mentally incapable of handling his affairs. In accordance with 37 U.S.C. 602, the board shall consist of at least three qualified medical officers or physicians appointed from medical officers or physicians available to, and under the jurisdiction of, the convening authority. Membership may include members of the Re-

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serve components on active or inactive duty. At least one of the members of the board, preferably a psychiatrist, shall personally observe the alleged mental incompetent and shall satisfy himself that the medical record correctly reflects the individual's state of mental health.

(2) The convening authority shall ensure that the board attaches to its record a certification, signed by three members of the board. This certification shall state that the member is mentally capable or incapable of managing his affairs.

(3) The convening authority shall forward one copy of the record and competency certification as follows:

(i) *Naval Service.* To the AJAG(CL) Office of the Judge Advocate General, Washington, DC 20370; Attn: Code 137;

(ii) *Army.* To the Commanding General, Finance Center, U.S. Army, Indianapolis, IN 46249 (Attn: Settlements Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(iii) *Air Force.* To the Director of Military Personnel, Headquarters USAF, Washington, DC 20030 (Attn: AFPMC, Randolph AFB, Universal City, TX 71848);

(iv) *Coast Guard.* To the Commandant, U.S. Coast Guard (Code PSS162), 400 7th St., S.W., Washington, DC 20590;

(v) *Coast and Geodetic Survey (ESSA).* To the Director, Coast and Geodetic Survey, Washington Science Center, 11800 Old Georgetown Road, Bethesda, MD 20852;

(vi) *Public Health Service.* To the Chief, Office of Personnel, Public Health Service, Department of Health and Human Services, 5600 Fisher Lane, Rockville, MD 20857.

This report is to be used as the medical basis for a trustee designation, or for the termination of a trusteeship previously established on a finding of incompetency.

(4) In the case of a finding of incompetency, the convening authority, in his forwarding endorsement, shall set forth the name, relationship, and address of the member's next of kin, and such other pertinent data as may be available to assist in the designation of a trustee to receive amounts which are, or may become, payable to the member. This additional information need not be furnished where a trustee or other legal representative has been designated or has been appointed as the result of a prior determination of mental incompetency and the designation is still in effect.

[35 FR 13083, Aug. 18, 1970, as amended at 41 FR 26862, June 30, 1976; 47 FR 28370, June 30, 1982]

§ 726.5 Approval of medical board report and suspension of pay account.

(a) In the naval service, a certification of competency or incompetency becomes effective, for purposes of the establishment or termination of a trusteeship, upon approval by the AJAG(CL). In the case of a trustee designation by the AJAG(CL), after receipt of the medical-board report, separate approval of the report and certification is not required. It is considered to have been expressed through the act of trustee designation. Otherwise, the approval action of the AJAG(CL) shall be by endorsement on the report. The disbursing officer shall be notified of the trustee designation or other approval action in accordance with § 726.7. If trustee designation is for any reason delayed beyond the date of the approval of the report, the AJAG(CL) shall notify the disbursing officer holding the member's active duty pay account or retired-pay account of the approval of the medical board report and of the effective date to suspend the pay account of the member pending:

(1) Designation of a trustee by the AJAG(CL),

(2) Appointment of a committee, guardian, or other legal representative by a court of competent jurisdiction, or

(3) Notification by the AJAG(CL) that a board of medical officers has thereafter found the member capable of managing his own affairs.

(b) The member shall, as usual, be paid funds due him (subject to any allotments, tax withholdings, etc.) until the disbursing officer is notified of: (1) The designation of a trustee, (2) The appointment of a legal representative,

or (3) The approval of the medical board report plus effective date of suspension of the member's pay account.

[35 FR 13083, Aug. 18, 1970, as amended at 41 FR 26863, June 30, 1976]

§ 726.6 Comfort items while in hospital.

The commanding officer of any service hospital may designate an officer under his command to receive and receipt for a sum of money not to exceed $15 per month from the accrued pay of a member who is a patient at the hospital, and who has been found to be mentally incompetent in a report of medical officers. This money may be used only for the purchase of comfort items for the use and benefit of such member when all of the following conditions exist:

(a) A trustee has not yet been designated and a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction;

(b) The member has no other funds available for use in his own behalf; and

(c) Competent medical authority agrees that the items to be purchased will serve the comfort of the member. This section shall be indicated on the voucher as the authority for payment and receipt of such monthly comfort money.

§ 726.7 Procedure for designation of a trustee.

(a) *Requests.* (1) Requests for the designation of a person or persons to receive moneys due Navy or Marine Corps personnel believed to be mentally incapable of managing their affairs should be submitted to the AJAG(CL) by any person or persons who believe, because of their relationship, that they should receive payments on behalf of the alleged incompetent; by the commanding officer of the alleged incompetent if the latter is on active duty; by the commanding officer of any Armed Forces or Public Health Service hospital in which the alleged incompetent is undergoing treatment; by the head of any Veterans' Administration hospital or other public or private institution in which the alleged incompetent is undergoing treatment; or by any other person or organization acting for, and in the best interests of, the alleged mental incompetent.

(2) If a trustee has not been designated pursuant to paragraph (a)(1) of this section, the member's commanding officer or the commanding officer of a naval hospital, the Governor, U.S. Naval Home, or the director of a Veterans' Administration hospital, in order to provide for the patient's anticipated needs, may request the AJAG(CL) to provide the commanding officer or director with funds, not to exceed $250 due in the accounts of the incompetent person, until a trustee is appointed. See paragraph (g) of this section for possible release of additional funds by supplemental instruction.

(b) *Interview of prospective trustee.* Upon receipt of a request for the designation of a trustee, and after a medical report has been received showing that the member is incapable of handling his affairs, the AJAG(CL) may request the Commandant of the Naval District in which the prospective trustee resides to designate an officer to interview the prospective trustee and to make a recommendation as to whether the prospective trustee is suitable to be designated as trustee to receive the Navy or Marine Corps pay of the incompetent. The Commandant shall forward the report of such interview, together with his recommendations, to the AJAG(CL).

(c) *Surety bond.* The trustee designated to receive moneys in behalf of the incompetent shall furnish a suitable bond in all cases when the amounts to be received may be expected to exceed $1,000 and in other cases when deemed appropriate by the AJAG(CL). The bond so required and furnished shall have as a surety a company approved by the Federal Government and shall be in such amount as required by the AJAG(CL). Expenses in connection with furnishing of such bond may be paid after the designation of a trustee out of sums due the incompetent. The officer designated to interview the prospective trustee may advise and assist the prospective trustee regarding the securing of the required bond.

(d) *Affidavit requirement.* The interviewing officer will have the prospective trustee execute an affidavit for

filing with the AJAG(CL), deposing that any moneys henceforth received by virtue of the designation as trustee shall be applied solely to the use and benefit of the incompetent and his legal dependents, if any, and that no fee, commission, or charge shall be demanded, or in any manner accepted, for any service or services rendered in connection with such designation as trustee.

(e) *Designation of trustee by the AJAG(CL).* After receipt of a medical report which states that an individual is incompetent, and the required affidavit and bond have been furnished, the AJAG(CL) may designate a suitable person, not under legal disability, to act as trustee to receive and expend, under instructions of the AJAG(CL), all amounts due from the Navy or Marine Corps, whether active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay.

(1) While a next of kin or other relative of the member is ordinarily considered preferable for designation as trustee, any other person, willing and suitable to act as such may be designated as trustee, permanently or temporarily, unless or until a committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction.

(2) In lieu of the designation of an interviewing officer by the District Commandant (as set forth in paragraph (b) of this section) the AJAG(CL) may, when considered feasible by him, request the commanding officer of a naval hospital or the members commanding officer to interview the prospective trustee, or to have him interviewed, and to have the prospective trustee execute the affidavit described in paragraph (d) of this section. In order to expedite the proceedings in the interest of the member, if the commanding officer cannot locate any relative willing and suitable to act as trustee and so states in his forwarding endorsement, he may make recommendations for the designation as trustee, permanent or temporary, of any other person willing and suitable to act as such, interview him or have him interviewed; obtain his affidavit, and attach it to the forwarding endorsement. See § 726.4(c)(4).

(3) When delay is encountered in locating a relative or other person who is willing and suitable to act as trustee, or when otherwise considered in the best interest of the member, the commanding officer of a naval hospital or the member's commanding officer may, subject to local law, initiate action for appointment of a committee, guardian, or other legal representative for the member by a court of competent jurisdiction. In order to initiate such action, the commanding officer may suggest appropriate action to the local legal aid society, a cognizant official of the State or municipal public welfare department, or any other State or local official cognizant of the matter under State law, or the local U.S. attorney; or a legal officer of the command could take action as may be appropriate under the circumstances and in accordance with local law. No appropriated or nonappropriated naval funds may be expended in connection with proceedings thus initiated by a legal officer of the command, or by others in the civilian community as a consequence of the initiative of the commanding officer. Nor shall funds accrued to the account of the member be expended in connection with any such proceeding except as may be authorized by a court of competent jurisdiction.

(f) *Notification to the disbursing officer of the designation of a trustee.* Upon the designation of a trustee to receive moneys due an incompetent, the AJAG(CL), in the case of those incompetents on active duty, shall notify the commanding officer of the incompetent and such commanding officer shall notify the disbursing officer having custody of the incompetent's pay record. The AJAG(CL), in the case of retired personnel of the Navy and Naval Reserve, and personnel of the Fleet Reserve, shall notify the Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), Cleveland, Ohio 44199, and the Chief of Naval Personnel of the designation. In cases of retired personnel of the Marine Corps Reserve, and personnel of the Fleet Marine Corps Reserve the AJAG(CL) shall notify the Com-

manding Officer, Marine Corps Finance Center (Retired Pay Division), Kansas City, Mo. 64197 of the designation of a trustee. After such notification, payments of all moneys due to the incompetent shall be made by the appropriate officer to the designated trustee.

(g) *Notification to the disbursing officer of the designation of commanding officer or director as a temporary fiduciary.* Upon the designation of the commanding officer; the Governor, U.S. Naval Home, or the director of a Veterans' Administration hospital as a temporary fiduciary in accordance with paragraph (a)(2) of this section to receive sums not to exceed $250 due an incompetent, the AJAG(CL), in the case of an incompetent on active duty shall notify the commanding officer of the incompetent, and such commanding officer shall notify the disbursing officer having custody of the incompetent's pay record to pay to the temporary fiduciary a designated amount or amounts as they become due, not to exceed $250. However, further sums as they become due in the accounts of the member shall be held in a suspended status pending the formal designation or appointment of a trustee or guardian, or the AJAG(CL) shall issue a supplemental instruction for the further release of funds. The AJAG(CL), in the case of retired personnel of the Navy and Naval Reserve and personnel of the Fleet Reserve, shall notify the Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), Cleveland, Ohio 44199, of the designation. In cases of retired personnel of the Marine Corps, Marine Corps Reserve, and personnel of the Fleet Marine Corps Reserve, the AJAG(CL) shall notify the Commanding Officer Marine Corps Finance Center, Retired Pay Division, Kansas City, Mo. 64197, of the designation. After such notification, amounts as they become due (other than the $250) shall be held in a suspended status pending the formal designation or appointment of a trustee or guardian, or a supplemental instruction by the AJAG(CL) for release of further funds.

[35 FR 13083, Aug. 18, 1970, as amended at 41 FR 26863, June 30, 1976]

§ 726.8 Reports and supervision of trustees.

(a) *Annual accounting report.* The trustee designated under this part shall submit accounting reports annually or at such time as the AJAG(CL) may desire. The reports shall show all funds received from the Navy or Marine Corps in behalf of the incompetent, all expenditures made in behalf of the incompetent, and a statement of the condition of the trustee account at the time of the submission of the report. When requested by the AJAG(CL), it shall be accompanied by receipts, canceled checks, or vouchers covering expenditures. If the trustee fails to report promptly at the end of any annual reporting period, or at such other time as the AJAG(CL) desires, the AJAG(CL) may, in his discretion, cause further payments to such trustee to cease and may, if deemed advisable, designate a successor trustee, not under legal disability, to receive the future payments of moneys due the incompetent. Upon request of the AJAG(CL), the trustee shall furnish for examination all bank statements of the trustee checking accounts, trustee savings account pass books or trustee savings account bank statements, or other records concerning the trustee account.

(b) *Termination of payments to trustee.* Payments due an incompetent member shall cease to be paid to the trustee upon receipt of notification by the disbursing officer; Commanding Officer, U.S. Navy Finance Center (Retired Pay Department); or Commanding Officer Marine Corps Finance Center (Retired Pay Division) of the occurrence of any of the following:

(1) Death of the incompetent;

(2) Death or disability of the trustee appointed;

(3) Receipt of notice that a committee, guardian, or other legal representative has been appointed for the incompetent by a court of competent jurisdiction;

(4) Receipt of notification from the AJAG(CL) of the failure of a trustee to render any of the required reports;

(5) Receipt of notification by the AJAG(CL) that there is probable

cause to believe that there is improper use of moneys received on behalf of the incompetent;

(6) Receipt of notification from the AJAG(CL) that a board of medical officers or other appropriate medical authorities have found the former incompetent mentally capable of managing his own affairs. (The AJAG(CL) may, at his discretion accept the findings of a Veterans' Administration hospital or of a Public Health Service hospital, or the findings of other public or private institutions, that a person formerly found incompetent is now competent.); or

(7) Receipt of notification that the AJAG(CL) deems it to be in the best interest of the incompetent.

In the event of termination of payments under paragraph (b)(2), (4), (5), or (7) of this section, the AJAG(CL) may appoint a successor trustee under the provisions of this part.

(c) *Notification by the disbursing officer to the AJAG(CL) of all payments made to trustee.* The disbursing officer carrying the active-duty pay account of an incompetent shall report to the AJAG(CL) all payments made to a trustee and shall notify the AJAG(CL) when the accounts of the incompetent have been transferred to another activity.

(d) *Notification to the AJAG(CL) of change in status of the pay account of the incompetent.* The Commanding Officer U.S. Navy Finance Center (Retired Pay Department), and the Commanding Officer Marine Corps Finance Center (Retired Pay Division) shall notify the AJAG(CL) if the retired pay is waived, in whole or in part, in favor of Veterans Administration compensation. In addition, the respective officers shall notify the AJAG(CL) of any other change in the status of the retired-pay account of the incompetent, such as caused by death, or the appointment of a legal guardian, committee, or other legal representative by a court of competent jurisdiction. Said officer shall furnish the AJAG(CL) with a report as to the amount of pay paid trustees annually, or as requested, or at the time of a change in the status of the trusteeship.

[35 FR 13083, Aug. 18, 1970, as amended at 41 FR 26853, June 30, 1976]

§ 726.9 Requirement that a trustee shall file a final accounting report.

When payments under this part are terminated, the trustee shall file a final accounting report with the AJAG(CL). When the final accounting report has been approved, the trustee shall be discharged by the AJAG(CL) and the surety released on its bond. In the event of death or disability of a trustee, the final accounting report shall be filed by his legal representative.

[35 FR 13083, Aug. 18, 1970, as amended at 41 FR 26853, June 30, 1976]

§ 726.10 Authority of the Judge Advocate General to issue implementing instructions.

All powers given the AJAG(CL) in this part are also vested in the Judge Advocate General. The Judge Advocate General may issue such further instructions, not in conflict with this part, as may be necessary to give full force and effect to this part.

[35 FR 13083, Aug. 18, 1970, as amended at 41 FR 26863, June 30, 1976]

§ 726.11 Chapter 11, 37 United States Code.

The provisions of 37 U.S.C. 601, et seq., are applicable. (See § 726.1.)

PART 727—LEGAL ASSISTANCE

Sec.

727.1 Purpose.
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727.5 Persons eligible for assistance.
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727.14 Files and records.
727.15 Liberal construction of part.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6026, Mar. 6, 1973, unless otherwise noted.

§ 727.1 Purpose.

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this part is to provide guidelines for the continuation of the program.

§§ 727.2—727.4 [Reserved]

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. The service is intended primarily for the benefit of personnel during active service, but is to be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible.

§ 727.6 Functions of legal assistance officers.

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist persons eligible for assistance in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in § 727.9.

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings.

(3) Shall, in appropriate cases and under guidelines prescribed in the Manual of the Judge Advocate General contemplating agreements or liaison with appropriate civilian bar officials, serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

(4) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(5) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV Instruction 5350.5 series.

(b) *Nature of assistance.* Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

(c) *Duty to client.* A legal assistance officer should exercise his independent professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

[41 FR 26863, June 30, 1976]

§ 727.7 Limitations on service provided.

(a) *Assistance in official military matters.* Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudi-

cial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a serviceman accused or suspected of an offense or of conduct leading to administrative proceedings will request advice from the legal assistance officer. In such a case, he should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for a respondent, or counsel for a party.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

(c) *Nonlegal advice.* The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. 201, and 18 U.S.C. 205.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

[41 FR 26863, June 30, 1976]

§ 727.8 Confidential and privileged character of service provided.

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by § 727.13 of this part. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. While case files are not subject to the control of the Department of the Navy and therefore do not constitute a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. 552a), no information which identifies an individual legal assistance client by name or any other particular, such as social security number, shall be extracted from the case files and incorporated into any file or index system aside from or in addition to the information contained on the legal assistance form (NAVJAG 5801/9) or locally used equivalent. Strict adherence to the foregoing will ensure compliance with the Privacy Act. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

[42 FR 35957, July 13, 1977]

§ 727.9 Referrals to civilian lawyers.

(a) *General.* If it is determined that the legal assistance requested is beyond the scope of this part, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization

for assistance in obtaining reliable, competent, and sympathetic counsel, or to a civilian lawyer designated by such organization.

(b) *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

§ 727.10 Fees and compensation.

Military and civilian employees of the Navy are prohibited from accepting, directly or indirectly, any fee or compensation of any nature for legal services rendered to any person entitled to legal assistance under this part.

§ 727.11 Supervision.

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, officers in charge of Naval Legal Service Offices, and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall ensure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

[42 FR 35957, July 13, 1977]

§ 727.12 Communications.

(a) Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

(b) The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in Department of Defense Instruction 5330.2 of July 12, 1968. A sample of the letterhead to be used is:

Legal Assistance Office, Building 200, Washington Navy Yard, Washington, D.C. 20374, Tel: 202-433-4331.

Naval Legal Service Offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply United States Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in § 727.8.

[42 FR 35958, July 13, 1977]

§ 727.13 Reports.

Each legal assistance office shall, by the 10th day of January of each year, prepare and submit to the Judge Advocate General two copies of the Legal Assistance Report (NAVJAG 5801/3 Rev. 5-71)) covering the preceding calendar-year period. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in § 727.11. Reports symbol JAG-5801-1 is assigned for this reporting requirement.

§ 727.14 Files and records.

(a) *Case files.* The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore main-

tain only such files as are necessary for the proper operation of the office.

[38 FR 6026, Mar. 6, 1973, as amended at 42 FR 17355, Apr. 24, 1978]

§ 727.15 Liberal construction of part.

The provisions of this part are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

PART 728—MEDICAL CARE FOR ELIGIBLE PERSONS AT NAVAL MEDICAL FACILITIES

Subpart A—General

Sec.
728.1 Mission of naval medical facilities.
728.2 General restrictions.
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AUTHORITY: Secs. 5031, 6011, 70A Stat. 278, 375, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply R.S. 4807, sec. 4, 57 Stat. 81, secs. 5537, 6148, 6201-6203, 70A Stat. 319, 383, 387, secs. 1071-1085, 72 Stat. 1445-1450, as amended; 10 U.S.C. 1071-1085, 5537, 6148, 6201-6203, 24 U.S.C. 15, 34.

SOURCE: 26 FR 12661, Dec. 29, 1961, unless otherwise noted.

Subpart A—General

§ 728.1 Mission of naval medical facilities.

The primary mission of naval medical facilities is to provide adequate medical care for members of the Navy and Marine Corps on active duty and for members of the other uniformed services on active duty, who may be sick, injured, or disabled. In addition, naval medical facilities may provide medical care to members not on active duty in the uniformed services and to such other persons as authorized by law, U.S. Navy Regulations, and Department of Defense and/or Department of the Navy directives. These authorizations also provide that naval medical facilities may sometimes be called upon to furnish medical care to civilians and to other persons not otherwise entitled to medical care pursuant to the laws of humanity or principles of international courtesy.

§ 728.2 General restrictions.

(a) *No interference with primary mission.* Medical care of persons other than active duty members of the uniformed services may not be permitted to interfere with the primary mission of the Medical Department. This mission consists of a responsibility imposed on the Surgeon General and the Medical Department to maintain and to restore the health of members of the Navy and Marine Corps on active duty and members of the other uniformed services for whom medical care is provided.

(b) *Determination by cognizant medical authority.* The cognizant medical authority of the naval medical facility has the responsibility and authority over the extent to which his facility can provide care for persons other than members of the uniformed services on active duty. A determination by the cognizant medical authority of the naval medical facility, or his designee, as to the availability of space and facilities and to the capabilities of the medical staff shall be conclusive.

(c) *Availability.* Persons other than members of the uniformed services on active duty and retired members placed on the temporary disability retired list who require hospitalization in connection with periodic physical examinations may be provided medical care, subject to the availability of space and facilities and to the capabilities of the medical staff.

(d) *Identification.* Persons requesting medical care shall furnish the cognizant medical authority with satisfactory identification to prove their eligibility for medical care, or a written authorization when prescribed.

(e) *Ambulance service.* Ambulance service may be provided when sound medical judgment indicates the necessity therefor. Such use of ambulances shall be subordinate to local needs of the naval medical facility in support of the primary mission to care for active duty members of the uniformed services.

§ 728.3 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Medical care.* The term medical care embraces outpatient and inpatient professional care and treatment, nursing care, diagnostic tests and procedures, physical examinations, immunizations, prophylactic treatments, medicines, biologicals, other similar medical services, and ambulance service. Prosthesis, hearing aids, specta-

cles, orthopedic footwear, and similar adjuncts to medical care may be furnished only where such adjuncts are authorized.

(b) *Hospitalization.* The term hospitalization includes inpatient care at naval hospitals, hospital ships, station hospitals, and dispensaries.

Subpart B—[Reserved]

Subpart C—Members of the Reserve Components, Reserve Officers Training Corps, and Navy and Marine Corps Officer Candidate Programs

§ 728.21 Reserve components of the Armed Forces.

The reserve components are the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve (10 U.S.C. 261).

§ 728.22 Members of the Navy and Marine Corps reserve components, and the Fleet Reserve and Fleet Marine Corps Reserve.

(a) *Authority.* Under the provisions of 10 U.S.C. 6148, members of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, and the Fleet Marine Corps Reserve are eligible for certain medical benefits for an injury or disease incurred in the line of duty.

(b) *Injury incurred in line of duty.* A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty (including active duty for training), or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed, is entitled to the same hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps. For the purpose of these benefits, a member who is not in a pay status shall be treated as though he were receiving the pay and allowances to which he would be entitled if serving on active duty.

(c) *Disease incurred in line of duty while on active duty.* A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty (including active duty for training) for a period of more than 30 days, and is disabled in line of duty from disease while so employed, is entitled to the same hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps.

Exception: A member of the Naval Reserve or the Marine Corps Reserve who is ordered to perform involuntary active duty for training under the provisions of 10 U.S.C. 270 is only eligible for the limited medical benefits described in paragraph (d) of this section, following termination of the training duty period.

(d) *Illness or disease contracted in line of duty in peacetime.* A member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while on active duty (including active duty for training) or performing inactive-duty training is entitled to receive medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment. The treatment may not extend beyond 10 weeks after the member is released from active duty, except:

(1) Upon an approved recommendation of a board of medical survey consisting of one or more officers in the Medical Corps, or

(2) Upon authorization of the Surgeon General, based on the certificate of a reputable physician that the illness or disease is a continuation of the illness or disease for which the member was initially treated and that benefit will result from further treatment.

(e) *En route to or from active duty.* A member of the Naval Reserve or Marine Corps Reserve is authorized

medical care for an injury or disease incurred while en route to or from active duty or active duty for training, but not while en route to or from inactive-duty training.

(f) *Injury or disease not in line of duty.* A member of the Naval Reserve or the Marine Corps Reserve is not entitled to medical care either before or after the training period for an injury or disease not incurred in the line of duty. Charges for care for such an injury rendered after expiration of the training period shall be at the general reimbursement rate and shall be collected from the member locally.

(g) *Review cases.* A member of the Naval Reserve or the Marine Corps Reserve who has been released to inactive duty and whose case is being reviewed by the Naval Physical Disability Review Board may be admitted to a naval hospital for diagnosis upon request of the senior member or the president of the Board.

(h) *Nonnaval medical care.* Part 732 deals with eligibility of members of Navy and Marine Corps reserve components to medical care at other than naval medical facilities.

(i) *Charges and collections.* Officers in a pay status shall be charged the value of a hospital ration or subsistence, and the amount collected locally. For members not entitled to hospitalization at Government expense, the general rate shall be charged and collected locally. Reimbursement to BUMED managed activities for the average cost of ration furnished to enlisted men shall be effected in accordance with instructions contained in the Financial Management Handbook (NAVMED P-5020). For activities not under the management of BUMED, reimbursement shall be effected in accordance with instructions contained in NAVCOMPT Manual.

[26 FR 12661, Dec. 29, 1961, as amended at 28 FR 7749, July 31, 1963]

§ 728.23 Members of the Army and Air Force Reserve components.

(a) *Authority.* Members of the reserve components of the Army and Air Force are entitled to medical benefits for injuries or disease incurred in line of duty under provisions of 10 U.S.C. 3721-3722 and 8721-8722.

(b) *On active duty for training.* Members of the Army and Air Force Reserve and the National Guard are entitled to the same medical care as members of the Regular components when they are injured or incur disease in line of duty while on active duty for training. They may be provided necessary hospitalization, rehospitalization, and medical and surgical care appropriate for the treatment of the injury or disease until the resulting disability cannot be materially improved. Transportation incident to hospitalization is also authorized. (Medical care is authorized for injury or disease contracted while en route to and from active duty for training.)

(c) *On inactive duty for training.* Members of the Army and Air Force Reserve and the National Guard injured in line of duty while on inactive duty training, such as training assemblies or flights in Government owned aircraft under proper authority and incident to training, are entitled to medical care for such injury until the resulting disability cannot be materially improved. Medical care is not authorized for injuries incurred while en route to or from inactive duty training or for disease contracted while on, or en route to or from inactive duty training.

(d) *Injuries or disease incurred not in line of duty.* Members of the Army and Air Force Reserve and the National Guard are not entitled to medical care beyond the training period for injuries or disease incurred not in line of duty. Charges for care rendered after expiration of the training period shall be at the general reimbursement rate and shall be collected from the individual locally. The patient shall be notified of change of status prior to termination of the training period.

(1) *Doubtful line of duty cases.* In doubtful line of duty cases, the commanding officer shall immediately request a line of duty status determination before the end of the training period. Should a recommended in-line-of-duty determination be made at the local level, medical care may be furnished after date of expiration of active duty. If this recommended in-line-of-duty determination should be reversed by the final approval authori-

ty, the individual concerned may be furnished care without charge (except for subsistence in the case of officers in a pay status) from the date of expiration of active duty to the date of notification to the individual of the final line of duty determination. Medical care received subsequent to the individual's notification is not authorized and the charges therefor shall be collected locally.

(e) *Admission.* Except in emergencies, a written authorization from the appropriate commander shall be required before the admission to naval medical facilities of members of the Army and Air Force Reserve and the National Guard who are serving on active duty for training or inactive duty training. In an emergency admission, appropriate authorization shall be obtained as soon as possible. The authorization shall include the full name, service number, grade, and organization of the patient; the type and period of duty in which engaged; diagnosis (if known); and include a statement that the disability was or was not incurred in the line of duty, and that the patient is, or is not, entitled to medical care.

(f) *Hospitalization beyond training period.* Members of the Army and Air Force Reserve and National Guard shall be transferred to an Army or Air Force medical facility, as appropriate, when it is determined that they will need hospitalization after their training duty period ends. The transfer should be made as soon as the patient's condition permits.

(g) *Charges and collections.* Officers in a pay status shall be charged the value of a hospital ration or subsistence, and the amount collected locally. For all other categories, no charges shall be collected locally. For members not entitled to hospitalization at Government expense, the general rate shall be charged and collected locally.

§ 728.24 Members of the Coast Guard Reserve component.

(a) *Authority.* 14 U.S.C. 755(c) provides that members of the Coast Guard Reserve who suffer sickness, disease, or injury are entitled to the benefits as prescribed for members of the Naval Reserve who suffer sickness, disease, or injury under similar conditions. Accordingly, medical care as authorized in § 728.22 will be applicable in case of members of the Coast Guard Reserve.

(b) *Admission.* Members of the Coast Guard Reserve may be admitted to naval medical facilities upon written authorization of an appropriate Coast Guard authority or Public Health Service medical officer in the same manner as members of the Regular Coast Guard.

(c) *Charges and collections.* Officers in a pay status shall be charged the value of a hospital ration or subsistence, and the amount shall be collected locally. For all other categories of Coast Guard Reserve patients, no charges shall be collected locally. For members not entitled to hospitalization at Government expense, the general rate shall be charged and collected locally.

§ 728.25 Members of the Reserve Officers Training Corps (ROTC).

(a) *Authority.* Pursuant to the provisions of 10 U.S.C. 4385, 6901, and 9385, members of the Reserve Officers Training Corps of the Army, Navy, and Air Force are entitled to medical care as indicated in this section.

(b) *Scope of care authorized.* Hospitalization, medical and surgical care, and necessary transportation incident to that hospitalization, medical or surgical care, are authorized for members of the ROTC who:

(1) Suffer an injury while engaged in flight instruction.

(2) Suffer an injury or disease while attending a training camp or training cruise.

(3) Suffer an injury while performing authorized travel to or from a training camp or training cruise.

(c) *Members of Army and Air Force ROTC.* Hospitalization furnished members of the ROTC of the Army or Air Force will be subject to reimbursement by the appropriate Department.

(d) *Medical care beyond the training period.* Medical care may not be provided members of the NROTC at Department of the Navy expense beyond the training period specified in orders.

(e) *Beneficiary of Bureau of Employees' Compensation (5 U.S.C. 802).* (1) Members of the ROTC who are injured in line of duty while engaged in training or travel described in paragraph (b) (1), (2), or (3) of this section, and who require medical care beyond the period of training specified in orders, will be reported to the Bureau of Employees' Compensation as potential beneficiaries of that Bureau.

(2) For the purpose of this section, members of the ROTC who contract a disease or illness which is the proximate result of the performance of training indicated in paragraph (b)(2) of this section shall be considered to have been injured in line of duty during that period.

(f) *Forms required.* When it is determined that an ROTC member who has been admitted to a medical facility for an injury, disease, or illness incurred in the line of duty requires care beyond period of attendance specified in his training orders, the commanding officer shall insure that a Form CA-16 (Request for Treatment of Injury Under the United States Employees' Compensation Act) or Form CA-17 (Request for Treatment of Injury Under the United States Employees' Compensation Act When Cause of Injury Is in Doubt), as appropriate, is submitted to the hospital by the patient's commanding officer. In such cases, the ROTC member shall be handled and reported as a beneficiary of the Bureau of Employees' Compensation.

(g) *Care in not-in-line-of-duty cases.* A member of the ROTC may be provided medical care in naval medical facilities, during the period while in attendance at training course or cruise, for an injury, disease, or illness contracted not in line of duty. Hospitalization after termination of the training period is not authorized at Government expense. The general reimbursement rate shall apply from the first day following the end of the training period and shall be collected locally from the patient. The patient shall be notified of change of status before termination of training period.

(h) *Not applicable.* The provisions of this section do not apply to members of the NROTC who hold an appointment as a midshipman in the Naval Reserve (Regular students) (see § 728.26).

(i) *While not performing training duty.* Members of the ROTC are not authorized medical care at Government expense while in attendance at colleges, universities, or other institutions. However, they are authorized to receive physical examinations prior to reporting for active duty for training or when requested by proper authority, and immunizations prior to reporting for active duty for training.

(j) *Charges and collections.* When authorized at the expense of the member's military service, no charges or collections shall be made locally. Reimbursement to BUMED managed activities for the average cost of rations furnished naval members shall be accomplished in accordance with instructions contained in the Financial Management Handbook (NAVMED P-5020). When authorized as a beneficiary of the Bureau of Employees' Compensation, charges at the interagency rate shall be made and collected by continental naval hospitals. Overseas naval hospitals shall make no charges or collections locally. For activities not under the management of BUMED, reimbursement shall be effected in accordance with instructions contained in NAVCOMPT Manual.

§ 728.26 Members of Navy and Marine Corps officer candidate programs.

Members of the Naval Reserve Officers Training Corps who are appointed midshipmen in the Naval Reserve (Regular students), members of the Reserve Officer Candidate Program, and the Platoon Leaders Class are entitled to the same medical care and hospital benefits as provided by law or regulation in case of members of the Navy and Marine Corps reserve components. Accordingly, provisions of § 728.22 shall apply for members of Navy and Marine Corps officer candidate programs.

§ 728.27 Navy and Marine Corps officer candidates; special physical examination.

Admission to naval medical facilities of candidates for, or individuals en-

rolled in, the Naval Reserve Officers Training Corps, the Platoon Leaders Class, Women Officers' Training Class, or the Naval Reserve Officer Candidates program who are not on active duty, is authorized for the purpose of conducting special physical examination procedures which have been requested by the Bureau to determine their physical fitness for appointment to, or continuation in, such a program. Upon a request from the individual's commanding officer or the officer in charge of the cognizant Navy or Marine Corps recruiting station or officer selection officer, naval medical facilities are authorized to admit persons in this category, when in the cognizant officer's opinion, hospitalization is deemed necessary for special physical examinations. Hospitalization should be kept to a minimum. Treatment other than for humanitarian reasons, unless otherwise provided for in this part, is not authorized.

§ 728.28 Inactive reserve commissioned officers of the Public Health Service; physical examination.

U.S. naval hospitals in the United States are authorized to conduct physical examinations of and administer immunizations to inactive Reserve commissioned officers of the Public Health Service upon presentation of written authorization from the U.S. Public Health Service. The authorization shall indicate the scope of the examination and immunizations required and the complete mailing address to which the completed report thereof is to be submitted. The examination and immunizations shall be given on an outpatient basis and consist of:

(a) A general physical examination reported on Standard Forms 88 and 89, to include X-ray, urinalysis (routine and microscopic), serological test for syphilis, hematocrit or hemoglobin, and red blood count, and

(b) Immunizations as necessary.

Subpart D—Retired Members of the Uniformed Services

§ 728.31 Authority.

Medical care is authorized for retired members of the uniformed services by 10 U.S.C. 1074(b) and by § 70.8 of this title.

§ 728.32 Retired members of a uniformed service defined.

(a) *Inclusion.* A retired member of a uniformed service is defined to include:

(1) A member or former member of a uniformed service who is entitled to retired or retainer pay or equivalent pay as a result of active duty in a uniformed service.

(2) A retired member of a Reserve component of the uniformed services who is entitled to retired pay from a uniformed service on attaining 60 years of age and who has completed 20 or more years of creditable service as set forth in 10 U.S.C. 1332, provided that he has served 8 or more years in a uniformed service on active duty other than for training.

(3) A member of a Reserve component of the uniformed services who is entitled to disability retired pay regardless of the period of active duty served.

(b) *Exclusion.* A retired member of a Reserve component of a uniformed service, who is entitled to retired pay by reason of years of satisfactory Federal service and who has not served on active duty for 8 years other than for training duty, is not eligible for medical care in medical facilities of the uniformed services under the provisions of 10 U.S.C. 1074(b).

§ 728.33 Scope of medical care authorized.

Retired members of the uniformed services (as defined in § 728.32(a)) are entitled to required medical care and adjuncts thereto to the same extent as provided for activity duty members in medical facilities of the uniformed services, subject to mission requirements and the availability of space and facilities and the capabilities of the medical staff as determined by the cognizant medical authority in charge of the medical facility. Nothing in this section is intended to change or modify the provisions of Executive Order 10122 of April 14, 1950 (3 CFR 1949-53 Comp., p. 313), as amended by Executive Order 10400 of September 27, 1952 (3 CFR 1949-53 Comp. p. 900).

§ 728.34 Application for medical care.

Retired members of the uniformed services may, upon request and presentation of valid identification, receive medical care and adjuncts thereto at naval medical facilities subject to provisions of §§ 728.33 and 728.35.

§ 728.35 Members retired for physical disability.

(a) *Chronic diseases.* All duties, powers, and functions incident to the hospitalization of retired members placed on the temporary disability retired list, or permanently retired for physical disability, or receiving disability retirement pay, who require hospitalization for chronic diseases, are vested in the Administrator of Veterans' Affairs. Such members may not be hospitalized in naval medical facilities, except:

(1) When hospitalization is authorized by the Veterans' Administration; or

(2) When such members have completed 20 or more years of active duty and elect not to receive hospitalization in Veterans' Administration facilities for chronic diseases other than blindness, neuropsychiatric or psychiatric disorders and tuberculosis, and are acceptable medically to the commanding officer of the naval medical facility.

(b) *Definition.* For the purpose of this section "chronic diseases" shall include chronic arthritis, malignancy, poliomyelitis with disability residuals, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, psychiatric or neuropsychiatric disorders, neurological disabilities, degenerative diseases of the nervous system, and severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics.

(c) *Scope.* This section shall not be considered to affect eligibility for hospitalization for conditions not defined as chronic diseases nor for outpatient treatment regardless of the nature of the illness for which treatment is required.

(d) *Temporary disability retired list.* Retired members placed on the temporary disability retired list who require hospitalization in connection with the conduct of periodic physical examinations may be admitted to naval medical facilities.

(e) *Emergency officers' retired list.* Persons placed upon the emergency officers' retired list who are receiving retired pay shall be eligible for hospitalization privileges provided by law or regulation for officers of the Regular Navy who have been retired for physical disability. Other persons placed upon the emergency officers' retired list without retired pay and entitled only to compensation pursuant to law or regulation of the Veterans' Administration may be admitted only as a beneficiary of that agency.

§ 728.36 Medications for retired members.

The provisions of § 728.43 shall apply in furnishing medications to retired members.

§ 728.37 Charges and collections.

(a) *Retired members.* Retired officers, drawing retired or retainer pay or equivalent pay as a result of active duty in a uniformed service, shall be charged the value of a hospital ration or subsistence. Charges shall be collected locally from the officer. No local charges or collections shall be made for enlisted retired members.

(b) *Reimbursement for cost of ration.* Reimbursement to BUMED managed activities for the average cost of rations furnished enlisted naval members shall be accomplished in accordance with instructions contained in the Financial Management Handbook. For activities not under the management of BUMED, reimbursement shall be effected in accordance with instructions contained in NAVCOMPT Manual.

Subpart E—Dependents of Uniformed Services

§ 728.41 General.

(a) *Eligible dependents.* The Dependents' Medical Care Act (10 U.S.C. 1071-1085) authorizes certain medical care to be provided eligible dependents of members and retired members of the uniformed services, and dependents of persons who died while a member or retired member of a uniformed service.

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(b) *Joint uniformed services regulations.* The medical service policies and procedures for administering the medical care program for dependents are promulgated by joint uniformed services regulations. Reference shall be made to these regulations (SECNAVINST 6320.8 series, see §§ 577.60 through 577.68 of this title) for information and guidance with respect to the following:

(1) Definition of terms peculiar to dependent medical care program.

(2) Determination of eligibility and authorization for admission of dependents.

(3) Determination of source from which dependents are to receive medical care.

(4) Administration of medical care for dependents at medical facilities of the uniformed services.

(5) Administration of medical care obtained from civilian sources for spouses and children of active duty members of the uniformed services.

(6) Administration of medical care not otherwise provided for.

(c) *Fiscal aspects.* The policies and procedures for guidance of naval activities with respect to fiscal aspects of medical care for dependents of the uniformed services are promulgated by SECNAVINST 6320.9 series (see §§ 577.80 through 577.84 of this title) and BUMEDINST 6322.6 series.

§ 728.42 Medical care at naval medical facilities.

(a) *Care for eligible dependents.* Upon request, and presentation of valid DD Form 1173 (Uniformed Services Identification and Privilege Card), authorized medical care shall be provided for eligible dependents of members and retired members of the uniformed services and dependents of eligible persons who died while a member or retired member of a uniformed service at U.S. naval fixed medical treatment facilities designated by the Bureau of Medicine and Surgery to provide inpatient and outpatient medical care for dependents. Normally, medical care shall be limited to those dependents residing in the areas which the facilities have been designated to serve.

(b) *Outpatient.* Except in cases of emergency, or as otherwise indicated by distance traveled or other extenuating circumstances, outpatient medical care for dependents is to be routinely available only during the regular working hours of the facility.

§ 728.43 Medical services not otherwise provided.

(a) *Prescriptions.* Prescriptions written by civilian physicians (non-Navy-employed) for dependents who present a valid DD Form 1173 (Uniformed Services Identification and Privilege Card) may be filled if:

(1) The commanding officer determines that pharmacy personnel and funds are available.

(2) The items are routinely stocked.

(3) The amounts are reasonable and correct as to dosage.

(4) Narcotics are not included. (Articles 3-31 and 3-33, Manual of the Medical Department, deal with prescribing and dispensing drugs.)

(b) *Medications.* Medications shall not be furnished by mail to retired personnel or dependents unless they are directly under the care of a naval physician. Such medications shall be limited to those regularly stocked, in reasonable amounts, correct as to dosage, and shall not include narcotics.

(c) *Therapeutic measures.* X-ray, laboratory, physical therapy, and other ambulatory diagnostic or therapeutic measures for eligible dependents requested by non-Navy-employed civilian physicians may be provided upon approval of the commanding officer or department heads designated by him, if the rendering of such services is subordinated to and does not unduly interfere with providing adequate inpatient and outpatient care to active duty personnel and other persons eligible to receive care at naval medical facilities.

(d) *Guard against excessive demands.* All activities shall guard against excessive demands for the privileges extended by paragraphs (a) through (c) of this section.

§ 728.44 Maternity cases.

The per diem charge for a maternity-case dependent shall include the mother and the newborn infant until the mother is allowed to leave the medical facility. If further hospitalization of the infant is required, the per diem charge shall continue for the infant. For purposes of computing per diem charge, a multiple birth shall be considered as one birth. The same per diem charge shall apply whenever an infant under 1 year of age is hospitalized, such charge to include the mother if she is required by the activity to remain with the infant. If the mother is hospitalized, and of necessity an infant under 1 year of age accompanies or remains with her, the per diem charge for the mother shall also include such infant. For a child 1 year of age or over, the per diem charge shall be in addition to the charge for the mother. A Standard Form 535, Newborn Record, shall be prepared. The infant shall be taken up in the Register of Patients as indicated in article 23-222, Manual of the Medical Department.

§ 728.45 Charges and collections.

Eligible dependents of active duty and retired members of the uniformed services, and dependents of persons who died while on active duty or in a retired status of the uniformed services shall be charged the dependent's rate. Charges shall be collected locally.

Subpart F—Members of Foreign Military Services and Their Dependents

§ 728.51 Medical care authorized in the United States.

(a) *Furnishing of medical care.* Members of foreign military services on active duty in the United States may be furnished medical care at naval medical facilities as authorized in this subpart and subject to the provisions of Subpart A of this part. In general, the policies of this subpart shall govern the furnishing of medical care to members of foreign military services on duty in the United States.

(b) *Inpatient care.* Inpatient care shall be limited to those cases which will benefit from definitive hospital care within a reasonable period of time. When a patient is found to require hospitalization in excess of 90 days, or his condition indicates that he should be transferred to a hospital within his own nation, or to a private institution, a notification shall be submitted promptly to the Bureau of Medicine and Surgery, giving full identification of patient, diagnosis, prognosis, estimated period of hospitalization, and recommended disposition. The Bureau will arrange appropriate disposition. Hospitalization generally shall not be granted to members of foreign military services who require prolonged hospitalization for chronic conditions, hospitalization for nervous or mental disorders, or domiciliary care, except in an emergency to preserve life or prevent suffering.

(c) *Adjuncts.* Prosthetic devices, hearing aids, orthopedic footwear and similar adjuncts are not authorized for members of foreign military services. Spectacles may be furnished when required to enable the member to perform his assigned duties and the spectacles are not available through civilian sources.

§ 728.52 Members of foreign military services assigned to NATO and their dependents.

(a) *General.* This section applies to medical care and treatment authorized for foreign personnel assigned to full-time duty with the North Atlantic Treaty Organization in the United States.

(b) *Authority.* By agreement signed in London June 19, 1951, regarding the status of their forces (TIAS 2846, 4 UST 1792), the parties to the North Atlantic Treaty of 1949 have pledged among other things that members of a force or a civilian component (and their dependents) may receive medical and dental care, including hospitalization, under the same conditions as comparable personnel of the receiving state.

(c) *Member countries.* Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Turkey, United Kingdom, and the United States.

(d) *Medical care*—(1) *Members of foreign military services (NATO).* These personnel will be provided medical and surgical treatment and hospitalization at naval medical facilities, comparable to that provided members of the naval service.

(2) *Dependents of members of foreign military service (NATO).* These dependents are eligible to receive outpatient and inpatient care at naval medical facilities comparable to that authorized for dependents of the uniformed services. Medical care for dependents will be subject to the provisions of Subpart A of this part. Dependents shall not be furnished hospitalization for chronic diseases, nervous or mental disorders, elective medical or surgical care, or domiciliary care.

(3) *Civilian components (employees of foreign military services).* These persons may be provided immediate and ambulatory outpatient care for injuries and illness incurred in the performance of and proximately caused by the employment and for nonoccupational illness and injuries where facilities permit, to the extent that it will aid the individual to remain on the job.

(e) *Dental care*—(1) *Members of foreign military services (NATO).* Eligible personnel may receive dental care at any naval activity having a dental facility. Orthodontic treatment is not authorized nor is prosthetic treatment unless it is required to restore an extensive loss of masticatory function or to restore anterior teeth when lost incident to active service.

(2) *Dependents of members of foreign military services—within United States, not in a designated remote area.* These dependents may be provided dental care at designated naval medical activities only as an adjunct to inpatient care. This care is limited to injuries such as fractures of the jaw and treatment of acute infections. Routine operative care, fixed or removable prosthodontic restorations, or orthodontic treatment are not to be construed as adjunctive to medical or surgical treatment. At other naval activities, dependents may receive only such emergency dental treatment as demanded by the laws of humanity.

(3) *Dependents of members of foreign military services—at designated remote areas within United States.* At designated remote areas within the United States where adequate civilian dental facilities are not available, routine dental care is authorized. Routine dental care includes general operative, surgical, and prosthodontic treatment which active duty members of the uniformed services are furnished. Determinations made by the senior dental officer of the uniformed service dental facility, or his designee, as to the professional aspects of providing necessary dental care within the availability and capability of the dental staff shall be conclusive. Determinations as to the availability of space and facilities, or lack of them, for dependent dental care, shall be made by the senior dental officer of the dental facility with the approval of the installation commander whose personnel are served by the dental facility concerned.

(4) *Civilian components (employees).* These persons may be provided emergency dental care for injuries incurred in the performance of duties, when such treatment is necessary and demanded by the laws of humanity, and when such treatment is available and practicable.

(f) *Disposition.* When it is found necessary to return individuals to their home country for medical reasons, immediate notification shall be made to the NATO unit sponsoring the patient. The notification is to include pertinent information regarding the physical condition of the individual concerned.

(g) *Charges and collections.* Charges for subsistence shall be collected locally from officer personnel at the established hospital ration rate. No reimbursement shall be required for periods when such officers are authorized to "subsist out" or while in an authorized "leave" status. No collections shall be made locally from enlisted personnel. Charges for inpatient medical care provided dependents of military personnel shall be collected locally at the established dependent rate. No charges shall be made locally for care provided civilian components (employees) covered by this part. Charges

and collections for hospitalization and/or subsistence shall be made and reported in accordance with current instructions applicable at the time care was provided.

§ 728.53 Members of Canadian armed forces other than NATO and their dependents.

(a) *Authority.* This section is based on Department of Defense Directive 6310.5 of March 5, 1956, dealing with medical and dental care for Canadian military personnel and their dependents.

(b) *Policy.* Members of the armed forces of the Dominion of Canada who are assigned to duty within the United States, or on an authorized pass or official leave of absence from such duty station in the United States, will be provided medical and dental care by the Navy only in its medical and dental treatment facilities in the United States. Dependents of Canadian armed forces members who are living with their sponsors in the United States during the period of such assignment will likewise be provided medical and dental care. Eligible members of the Canadian armed forces and their dependents shall receive inpatient and outpatient medical and dental care in naval medical and dental facilities comparable in all respects to that which is authorized generally, or in a specific locality, for active duty members of the Navy and Marine Corps and their dependents.

(c) *Application.* Members of the Canadian armed forces and their dependents will be provided medical and dental care upon request of the member's commanding officer or consular official or application of the member or dependent upon presentation of proper identification.

(d) *Notification.* When a member of the Canadian armed forces is admitted to or discharged from a naval medical facility in the United States, the commanding officer of the facility will, at the earliest practicable date, furnish appropriate notification directly to the Canadian Defense Liaison Staff, 2450 Massachusetts Avenue N.W., Washington, D.C. 20008. This notification will be in the form of copies of extracts of admission and disposition reports, or lists, as may be routinely prepared.

(e) *Charges and collections.* Canadian military personnel shall be charged the value of a hospital ration or only for subsistence incident to inpatient medical and dental care received in a Navy medical or dental facility in the United States. Charges shall be collected locally from all Canadian military personnel (officers and enlisted) at the subsistence rate current at the time of hospitalization. Charges for inpatient medical and dental care furnished dependents of Canadian military personnel shall be collected locally at the established dependent's rate current at the time of hospitalization. All local collections shall be credited to the appropriation that funds the operation of the activity, as applicable. No charge shall be made or reported for outpatient medical or dental care covered by this part. Prompt payment of authorized charges for subsistence and treatment obtained is the personal responsibility of the Canadian military member concerned.

[26 FR 12661, Dec. 29, 1961, as amended at 47 FR 28371, June 30, 1982]

§ 728.54 Foreign Military Assistance Program trainees.

(a) *Authority.* 22 U.S.C. 1750 et seq., followed by Pub. L. 87-195 (75 Stat. 424-434), and Office of the Chief of Naval Operations (OPNAV) Instruction 4950 series.

(b) *General policy.* Foreign Military Assistance Program trainees who have been selected by their country for training are presumed to be in good physical and mental health, as well as being free from communicable diseases as a prerequisite to selection. If, upon arrival, it is discovered that a trainee cannot qualify for training for reasons of physical and/or mental condition, and will require more than a small amount of treatment before entering training, a trainee shall be returned to his country immediately, or as soon thereafter as his condition will permit travel.

(c) *Hospitalization.* When a trainee requires hospitalization, or is disabled after starting a course of instruction, he shall be returned to his home coun-

try as soon as practicable when, in the opinion of the commanding officer of the naval medical facility, the hospitalization or disability will prevent the training for a period in excess of 30 days.

(d) *Surgical operations.* The overall policy in reference to elective and definitive surgery in case of foreign trainees is that conservatism should at all times prevail, except in the case of bona fide emergency situations which might threaten the life or health of certain trainees. Elective surgical operations are not authorized, except when permission is granted by the Chief of Naval Operations.

(e) *Notification.* The commanding officer of the naval medical facility shall notify the Chief of Naval Operations (OP-63) with information to the cognizant Chief, Navy Section Military Assistance Advisory Group (MAAG), BUMED, BUSANDA, and the cognizant bureau or office, when it becomes necessary to return a foreign trainee, who is hospitalized, to his home country. The notification shall include all pertinent information concerning the trainee's physical or mental condition, and a prognosis if the case is complicated.

(f) *Charges and collections.* Officers shall be charged the value of a hospital ration and collection made locally. No charges or collections are to be made from enlisted members.

§ 728.55 Members of other foreign military services.

(a) *Medical care upon request.* Members of foreign military services, not included in §§ 728.52 through 728.54, who are on active duty with a foreign military unit or organization within the United States may be provided inpatient and outpatient care at naval medical facilities upon request of the member's commanding officer or consular representative. Members of foreign military services within the United States include:

(1) Foreign military personnel in the attache 1 system carried on the current "Diplomatic List" (Blue) and foreign military personnel carried and designated as military personnel on the list of Employees in the Embassies and Legations in Washington not printed in the "Diplomatic List" (White), published by the Department of State. Those members appearing on the "Blue List" include the military and naval attaches and their assistant attaches who are accredited to this country. The members appearing on the "White List" include all other military members attached to the particular diplomatic staff.

(2) Foreign military personnel assigned or attached to United States military units for duty or training; foreign military personnel on foreign government military or supply missions accredited to and recognized by one of the military departments; foreign military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments. This category shall not include a MAP trainee.

(3) Foreign military personnel accredited to joint United States defense boards or commissions when stationed in the United States.

(4) Foreign military personnel covered in agreements entered into by the Secretary of Defense, Secretary of State, or one of the military departments to include, but not limited to, United Nations forces personnel of foreign governments.

(b) *Availability.* Medical care may be furnished to these members of foreign military services to the extent facilities are available and subject to the provisions of § 728.51.

(c) *Charges and collections.* Officers shall be charged the value of a hospital ration and collection made locally. No charges or collections shall be made from enlisted members.

§ 728.56 Dependents of members of foreign military services other than NATO and Canadian personnel.

(a) *Policy.* Dependents of a member of foreign military service on duty in the United States, who himself is entitled to medical care, when residing with their sponsor in the United States during the period of such assignment, are eligible for admission and treatment in naval medical facilities under the same terms, rates, and conditions as apply to dependents of members of U.S. uniformed services;

provided that necessary care is not available from facilities supported by the foreign government and provided further that precedence for admission of such dependents is after that accorded U.S. uniformed services dependents at the admitting medical facility.

(b) *Charges and collections.* Charge for hospitalization shall be at the dependent rate and collected locally. Dependents shall not be classified or reclassified as indigent without prior approval of the management bureau. Any account presenting collection difficulty shall be referred promptly to the management bureau in detail and shall not be reported uncollectible until so directed.

§ 728.57 Medical care authorized outside the United States.

(a) *Outside United States.* Major overseas commanders may authorize treatment to members of friendly foreign military services in naval medical facilities outside the United States when adequate facilities are available and when the necessary medical care cannot be obtained by the member in medical facilities of his own country.

(b) *Transfer for treatment at naval medical facilities in the United States.* (1) Members of foreign military service shall not be transferred to the United States solely for the purpose of obtaining medical care at naval medical facilities. Consideration may be given, however, to cases in special and unusual circumstances pursuant to the laws of humanity or principles of international courtesy.

(2) Treatment at naval medical facilities in the United States of members of foreign military services located outside the United States requires approval of the Secretary of the Navy. Naval commands, therefore, shall not commit the Navy by a promise of treatment at naval medical facilities in the United States of foreign military personnel located outside the United States.

(3) Approval generally will not be granted for treatment of members of foreign military services who suffer from incurable afflictions, who require excessive nursing and custodial care, or those who have adequate facilities in their own country.

(4) When a request is received concerning a member of a foreign military service located outside the United States for treatment at a naval medical facility in the United States, the following procedures shall apply.

(i) The request will be forwarded to the Chief of Naval Operations for administrative processing.

(ii) The request shall include: (*a*) Full name and grade of the service member; (*b*) the country of which a citizen; (*c*) results of coordination with the chief of the diplomatic mission to the country involved; (*d*) medical report giving the history, diagnosis, clinical findings, results of diagnostic tests and procedures and all other pertinent medical information; (*e*) availability of professional skills and adequacy of facilities for treatment in the member's country; and (*f*) who will assume financial responsibility for costs of hospitalization and travel.

(5) The Chief of Naval Operations will obtain appropriate State Department clearance and guidance, and advise the Secretary of the Navy accordingly. The Chief, Bureau of Medicine and Surgery, will furnish the Chief of Naval Operations information and recommendations relative to the medical aspects of the case and the U.S. naval hospital having the capabilities to provide the required care. In event of approval, the Chief of Naval Operations will furnish the commanding officer of the naval hospital written authorization for admission of the member for treatment.

(c) *Charges and collections.* Officers shall be charged the value of a hospital ration and collection made locally. No charges or collections shall be made from enlisted members.

Subpart G—Beneficiaries of Other Federal Agencies

AUTHORITY: Secs. 6201-6203, 70A Stat. 387, as amended; 10 U.S.C. 6201-6203.

SOURCE: 28 FR 7749, July 31, 1963, unless otherwise noted.

§ 728.61 Beneficiaries of the Veterans' Administration.

(a) *Bed allocation.* Designated naval hospitals have beds allocated for Veterans' Administration patients. The VA office of jurisdiction of the area in which the hospital is located will effect use of these beds. The number of beds set apart for VA patients may be exceeded during any month with the approval of the commanding officer of the hospital, provided that use thereof be correspondingly reduced in other months so that the average monthly use of such beds, at the end of the fiscal year, will not have exceeded the total allocation.

(b) *Authorization.* A VA beneficiary may be admitted to a naval hospital having beds allocated for VA patients on the presentation of a written authorization for admission from the VA office of jurisdiction. (Only in a bona fide medical emergency will an admission be authorized to a naval medical facility not having beds allocated for VA patients.) In general, only medical and surgical cases requiring hospital treatment will be admitted. Neurological and certain neuropsychiatric cases without obvious evidence of psychosis and not requiring restraint may be admitted for diagnosis. Cases of suspected tuberculosis may be admitted for diagnosis. When diagnosed, cases of psychosis, psychoneurosis, and tuberculosis of present clinical significance shall be reported to the VA office of jurisdiction with the request for prompt transfer to a VA facility.

(c) *Medical care.* A VA beneficiary admitted for inpatient treatment may be furnished complete medical and surgical care. Elective medical or surgical care is not authorized. Prostheses such as eyes or limbs and appliances such as hearing aids, spectacles, or orthopedic footwear may be furnished when required for the proper treatment of the patient. When a prosthesis or appliance is furnished a VA beneficiary receiving inpatient care in a naval hospital, no additional charge for such items is to be made since the reimbursement rate covers costs of all medical and surgical care and adjuncts to medical care in treatment of VA patients.

(d) *Emergency admissions.* A VA beneficiary presenting a bona fide medical emergency, other than a psychotic condition, may be admitted to a naval medical facility in the United States on his own application and the presentation of satisfactory evidence of eligibility, such as evidence of receipt of VA compensation or discharge for a service-connected disability. In an emergency admission, the commanding officer of the naval medical facility shall notify the appropriate VA office of jurisdiction by message or other expeditious means within 72 hours after the date and hour of admission and shall request authorization for the admission and emergency treatment. In case the VA office of jurisdiction does not authorize the emergency admission and care, or in case VA authorization is not received while the beneficiary is an inpatient, the patient shall be personally responsible for payment of the charges for his hospitalization at the general reimbursement rate. Collection shall be effected locally.

(e) *Disposition of emergency admissions.* A VA beneficiary admitted in an emergency shall be discharged promptly upon termination of the emergency, unless arrangements have been made with the VA office of jurisdiction:

(1) For transfer to a VA hospital if further hospitalization is required; or

(2) To retain as a VA beneficiary chargeable against a bed allocated to the VA.

(f) *Case number.* Each VA beneficiary upon admission shall be assigned a case number from the Register of Patients, DD Form 739. The case number should appear on all records of the patient. Each VA beneficiary admitted shall be required to conform to regulations governing the internal administration of the naval hospital. Restrictive or punitive measures and assignment to work details shall conform as nearly as possible to VA instructions.

(g) *Resolution of problems.* All problems pertaining to a VA beneficiary, including admission, medical or other records, and correspondence, shall be matters of resolution between the commanding officer of the naval hospital and the VA office of jurisdiction

authorizing admission. Questions of policy and administration which cannot be so resolved shall be forwarded to the Administrator of Veterans Affairs via BUMED for resolution.

(h) *Outpatient examinations.* Certain naval hospitals may be designated by BUMED to provide outpatient examinations required in the adjudication of claims for disability compensation. Such examinations shall be performed only when properly authorized by the VA. When the examination requires more than 1 day, the claimant shall be admitted as an inpatient from the beginning of the examination. The proper VA authorization for such admission shall be obtained.

(i) *Charges and collections.* Beneficiaries of the VA shall be billed at the interagency rate and collection made locally from the VA office of jurisdiction by hospitals located within the United States. For hospitals outside of the United States, charges and collections shall be made by the management bureau. Where authorized, charges for outpatient services rendered to certain VA beneficiaries patients shall be collected locally at the examination rate.

§ 728.62 Beneficiaries of the Bureau of Employees' Compensation.

(a) *Authority.* When a civilian employee sustains a personal injury while in the performance of duty, he is entitled to full medical care for effects of the injury under the Federal Employees' Compensation Act (5 U.S.C. 751-793). The term "injury" includes a disease which is proximately related to the duties of the employee. The term "employee" includes:

(1) All civil officers and employees of all branches of the Government of the United States (including officers and employees of instrumentalities of the United States wholly owned by the United States).

(2) Employees of the government of the District of Columbia (except members of the Police and Fire Departments of the District of Columbia).

(3) Persons rendering personal services of a kind similar to those of civilian officers or employees of the United States to any department, independent establishment, or agency thereof (including instrumentalities of the United States wholly owned by it) in any case in which acceptance or use of such services is authorized by an act of Congress.

(b) *Authorization for outpatient treatment and for admission.* (1) A civilian employee may receive treatment as an outpatient or be admitted to a naval medical facility for treatment as a Bureau of Employees' Compensation beneficiary upon presentation of a properly prepared Form CA-16, CA-17, or the equivalent from the employee's supervisor. Emergency medical care may be provided upon oral authorization from the employee's supervisor or without specific authority if the condition appears to be related to Federal employment, provided a properly executed request for treatment is issued by the employee's supervisor within 48 hours. Without a request for medical treatment on Form CA-16, CA-17, or the equivalent issued in accordance with regulations governing administration of the Federal Employees' Compensation Act (FECA), a naval medical facility has no authority to treat or admit an employee as a BEC beneficiary.

(2) Form CA-16 has been provided by the BEC for use in cases in which there is no doubt concerning the right of the employee to receive care. Form CA-17 has been provided for use in those cases where there may be doubt whether or not the disability of an employee is due to injury coming within the purview of the Act. This authorization permits a complete examination on an inpatient basis if necessary, including a reasonable period of diagnostic study and specialist consultation to establish a diagnosis and an opinion as to the probable relationship to an injury or condition of employment. If the BEC determines that the employee's injury or disease was not incurred in performance of his duty, that agency will inform the naval facility that no further treatment as an inpatient or outpatient shall be rendered to the employee as a BEC beneficiary. Charges for hospitalization or outpatient treatment then become the personal responsibility of the employee on and after the date of receipt of the notice of disallowance. The employee

shall be notified of the BEC ruling, and collection shall be effected from the employee for any period of hospitalization subsequent to date of receipt of notice of disallowance.

(3) The Forms CA-16 and CA-17 provide authority for treatment and/or admission; however, it is a responsibility of the medical facility to prepare and submit a Form CA-20 and supporting papers to the BEC in all cases and to submit a narrative summary, Standard Form 502, in all cases where (i) the disability is protracted 30 days or more, (ii) the medical relationship of the condition of an alleged injury or the occupational condition is not clear, or (iii) when requested by BEC.

(4) It is the primary duty of the employee's immediate supervisor to refer the employee for medical care in accordance with the Federal Employees' Compensation Act. 20 CFR 1.3 requires that each injury which is likely to result in any medical charge against the Compensation Fund; any disability for work beyond the day; prolonged medical treatment; future disability; permanent disability, including total or partial loss of use of arms or legs; or serious disfigurement of face, head, or neck shall be reported by the official superior on Form CA-2, Report of Injury. This report shall be transmitted to BEC without delay. The employee's original Notice of Injury, on Form CA-1 or otherwise, shall accompany the Report of Injury together with report of any investigation made and such statements or other data as may properly relate to the circumstances surrounding the injury. If the disability is not expected to exceed 3 days, the report may be withheld until the employee has returned to work. The Bureau of Employees' Compensation administers the medical care program and decides all questions arising in the furnishing of medical care to civilian employees.

(5) In the case of outpatient care provided as a followup to inpatient care, the authorization for admission shall be used to provide a continuation of treatment on an outpatient basis.

(c) *Medical care authorized*—(1) *Inpatient.* (i) Complete medical and surgical care necessary for treatment of an injury sustained while in the performance of duty, including, where not excluded by law, diseases proximately caused by the condition of employment, may be furnished a BEC beneficiary hospitalized in a naval medical facility. Specific BEC authorization should be obtained for major surgical procedures such as laminectomy, amputation of major members, vascular surgery, brain surgery, lung surgery, etc., unless the urgency of the situation is such that time would not permit the obtaining of separate authorization. A BEC beneficiary patient requiring prolonged hospitalization shall be reported to the BEC for transfer from the naval medical facility as soon as the patient's condition permits. Transfer shall be at the expense of the BEC.

(ii) When an orthopedic or prosthetic appliance is deemed necessary by reason of an injury which has been found by the BEC to have occurred while in the performance of duty, a request shall be submitted to the BEC for approval and shall include the necessity therefor, and a brief description and cost of the appliance. Minor appliances costing not more than $50 may be purchased without specific BEC authorization. When an appliance is furnished a BEC beneficiary while undergoing treatment as an inpatient, no additional charge shall be made for the item since the reimbursement per diem rate covers all cost incurred in treatment of inpatients.

(iii) Members of the Reserve Officers Training Corps will be provided medical care as BEC beneficiaries for the conditions set forth in Subpart C. Form CA-16 or CA-17 is required.

(2) *Outpatient.* Outpatient services shall be provided civilian employees:

(i) Who sustain occupational injuries (including occupational illnesses) for which hospitalization is not required.

(ii) As a continuation of treatment following hospitalization for occupational injuries and/or illnesses.

(d) *Regulations governing administration of the Federal Employees' Compensation Act.* Detailed procedural instructions can be found in the BEC booklet "Regulation Governing Administration of the Federal Employees' Compensation Act" (see 20 CFR

Ch. I, Subchap. B) and Navy Civilian Personnel Instructions.

(e) *Charges and collections.* Beneficiaries of the BEC shall be billed for inpatient and outpatient care at the rates prescribed by BUMED Instruction 6320.4 series and collections made locally from the BEC office of jurisdiction by hospitals. Charges and collections shall be made by BUMED for the Naval Hospital, Guantanamo Bay, Cuba, only. All billings must be supported by a CA-16 or CA-17; in addition, outpatient services shall be supported by a DD Form 7. Charges and collections for naval medical facilities not under the management control of BUMED shall be made in accordance with the Navy Comptroller Manual (vol. 3, chap. 5, sec. 2, subsec. 5).

(f) *Exception.* The BEC will not be billed for outpatient services provided civilian employees under the Navy's Health Program for Civilian Employees (see § 728.73).

§ 728.63 Beneficiaries of the Public Health Service, not members of the uniformed services.

(a) *Authority.* The following persons, not members of the uniformed services, are entitled to medical, surgical, and dental treatment and hospitalization under the Public Health Service Act (42 U.S.C. 249 and 253) and may receive such care and treatment at the expense of the Public Health Service and from other Government medical or hospital facilities when authorized by officials of that agency.

(1) Noncommissioned ships' officers and members of crews of the U.S. Coast and Geodetic Survey on active duty.

(2) Seamen employed on vessels of United States Registry.

(3) Seamen employed on State school ships or on vessels of the U.S. Government of more than 5 tons' burden.

(4) Cadets of State maritime academies on State training ships.

(5) Seamen on vessels of the Mississippi River Commission and officers and crews of vessels of the Fish and Wildlife Service.

(6) Enrollees in the United States Maritime Service on active duty and members of the Merchant Marine Corps.

(7) Employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty.

(b) *Authorization for admission.* (1) Persons in the above categories may be admitted to naval medical facilities within the United States as beneficiaries of the Public Health Service upon presentation of the prescribed form. Treatment Authorization (Form PHS 894), prepared and signed by the medical officer of the nearest PHS medical facility.

(2) In the case of detached personnel, or those serving in a locality where a PHS medical officer is not available, who require emergency medical care, a written request for hospitalization signed by either the individual or the commanding officer (or ship's master) may be accepted. Nonemergency cases shall not ordinarily be admitted until eligibility for admission has been verified. There is no exception to the treatment that members of the American Merchant Marine may receive as long as they can show proof that they have been employed as a seaman for 60 days of continuous service, a part of which time must have been during the 90 days immediately preceding application for medical care. In emergency or nonemergency cases, the medical officer in charge of the nearest PHS hospital or inpatient clinic shall be immediately notified of the details, and requested to verify the propriety of such request for treatment. In cases involving Military Sea Transportation Service civil service seamen, the verification may be obtained by contacting the nearest MSTS facility. The method of notification (telephone, telegraph, etc.) shall be determined by the urgency of the situation at hand. The verifying officer shall forward one copy of the Treatment Authorization.

(c) *Emergency status.* In determining emergency and nonemergency classification, consideration should be given to the seaman's present status. For instance: A seaman may request treatment for what would normally be considered as a nonemergency ailment; however, it may be of such a nature

that, unless treated, the man would not be able to sail with his ship. Such cases should be treated as an emergency.

(d) *Outpatient treatment.* Outpatient care may be furnished persons in the above categories only in an emergency when immediate treatment is required. In such cases, the commanding officer of the naval medical facility shall obtain authorization as required by paragraph (b)(2) of this section.

(e) *Outside the United States.* Outside the United States, only persons in the following categories may be provided medical care as PHS beneficiaries:

(1) Noncommissioned ships' officers and members of the Coast and Geodetic Survey on active duty.

(2) Employees and noncommissioned officers in the field service of the PHS when injured or taken sick in line of duty.

(f) *Charges and collections.* Charges and collections for PHS beneficiaries shall be made at the management bureau level.

§ 728.64 Selective Service registrants and applicants for enlistment or reenlistment.

(a) *Selective Service registrants*—(1) *Authority.* Selective Service registrants who suffer illness or injury while acting under orders issued under the Universal Military Service and Training Act are entitled to emergency medical care, including hospitalization, in accordance with rules and regulations prescribed by the Director of Selective Service (50 U.S.C. App. 461). Registrants shall be provided necessary medical care and treatment, including inpatient care, upon request of the local Selective Service official.

(2) *Charges and collections.* Charges and collections for Selective Service registrants shall be made at the management bureau level.

(b) *Applicants for enlistment or reenlistment.* (1) Applicants for enlistment or reenlistment while under military control who suffer acute illnesses and/or injuries while awaiting or undergoing enlistment processing at recruiting stations or at Armed Forces examining stations may be furnished emergency medical care including emergency hospitalization at military medical facilities. Admissions shall be accomplished in accordance with § 728.61(d).

(2) *Charges and collections.* Charges and collections shall be accomplished in accordance with § 728.61(i).

§ 728.65 Beneficiaries of the U.S. Naval Home.

(a) *Admission.* A beneficiary of the U.S. Naval Home at Philadelphia, Pa., may be admitted to a naval hospital upon the request of the Governor of the Naval Home. If a beneficiary is admitted in an emergency, the Governor or the Naval Home shall be notified immediately.

(b) *Charges and collections.* No charges are to be made for hospitalization.

§ 728.66 FBI Agents and claimants against the United States.

(a) *FBI Agents.* Agents of the Federal Bureau of Investigation are authorized to receive physical examinations at naval medical facilities upon presentation of a letter of authorization from the Department of Justice. Hospitalization, not to exceed 3 days, is authorized for diagnostic purposes only if necessary to determine the individual's physical fitness and will not be for the purpose of correcting defects.

(b) *Claimants against the United States.* Claimants against the United States whose claims or suits are being handled by the Department of Justice or a U.S. attorney may be given physical examinations at naval medical facilities upon written authorization from the Department of Justice or U.S. attorney in the case. The purpose of such examinations will be to determine the extent and nature of the injuries or disabilities claimed, and the report of such examinations shall be furnished promptly to the Department of Justice or U.S. attorney. Hospitalization, not to exceed 3 days, is authorized if necessary for the proper conduct of the examination.

(c) *Charges and collections.* Charges shall be made at the rates as prescribed by BUMED Instruction 6320.4 series. Collections for physical examinations shall be made at the activity

level for BUMED-managed activities (except Naval Dispensary, Washington, D.C.), and in accordance with the Navy Comptroller Manual (vol. 3, chap. 5, sec. 2, subsec. 5) for non-BUMED-managed activities. Collections for hospitalization shall be made by the management bureau upon receipt of the letter of authorization.

§ 728.67 Beneficiaries of the Department of State; officers and employees of the Foreign Service and their dependents.

(a) *Authority.* In the event an officer or employee of the Foreign Service who is a citizen of the United States, or his dependent, incurs an illness or injury while located abroad, which requires hospitalization or similar treatment, the Secretary of State is authorized to pay for the cost of treatment of the illness or injury under the Foreign Service Act of 1946, as amended (22 U.S.C. 1156).

(1) In case of a dependent, maternity care is not included.

(2) The term "dependent" includes wife who is not an employee of the Foreign Service; husband who is physically or mentally incapable of supporting himself; and unmarried children (including step and adopted children) under 21 years of age or, regardless of age, if physically or mentally incapable of supporting themselves.

(b) *Authorization for care.* (1) Foreign Service personnel and their dependents may be furnished inpatient and outpatient care at naval medical facilities for an illness or injury incurred abroad, upon written request from an appropriate Department of State official. In event that a Foreign Service employee or his dependent is admitted in an emergency without the required written request, the commanding officer of the naval medical facility shall obtain proper written authorization as soon as possible from the appropriate Department of State official. Outpatient care at the expense of the Department of State is authorized only when treatment is furnished for an illness or injury incurred abroad which requires hospitalization. Outpatient care before and following hospitalization is authorized.

(2) The written request for admission shall include complete identification of the Foreign Service employee or his dependent, and statements that the treatment is authorized under Foreign Service Act of 1946 and that reimbursement will be made by the Department of State.

(c) *Admission to naval medical facilities overseas.* (1) In event of an illness or injury of a Foreign Service employee or his dependent which, in the opinion of the principal or administrative officer of the Department of State, meets the conditions of eligibility for hospitalization, such officer will furnish the commanding officer of the overseas naval medical facility a letter, in duplicate, requesting admission of the employee or dependent at expense of the Department of State.

(2) In event that the Department of State principal or administrative officer believes that the illness or injury does not meet the conditions of eligibility for hospitalization, that officer may request admission of the Foreign Service employee or dependent at the patient's own expense. If admission is authorized by the commanding officer of the overseas naval medical facility, all hospitalization expenses incurred shall be the responsibility of the employee and shall be collected locally. If payment is not made within the prescribed period, the commanding officer shall notify the administrative officer of the nearest Foreign Service post. The principal officer at the employee's post will take immediate steps to insure that the naval medical facility is reimbursed by the Foreign Service employee.

(d) *Evacuation to the United States.* If it is determined that a Foreign Service employee or his dependent requires prolonged hospitalization, the commanding officer of the naval medical facility shall report the case to the nearest Department of State officer and request authority to return the patient to the United States. Aeromedical evacuation may be utilized in accordance with OPNAV Instruction 4630 series. Dependent patients requiring prolonged hospitalization who decline evacuation shall be released to custody of their sponsor.

(e) *Admission to U.S. naval hospital in United States.* The Medical Director, Department of State, will arrange

with the commanding officer of naval hospitals in the United States for admission of Foreign Service personnel and their dependents. Written authorization for admission, in duplicate, will be furnished by the medical director. In event an officer, employee, or dependent is admitted without prior authorization to a naval hospital in the United States in an emergency for treatment of an illness or injury incurred abroad, the commanding officer shall request authorization from the Medical Director, Department of State. *Admission is not authorized for an illness or injury incurred in the United States.*

(f) *Physical examinations and immunizations.* (1) The Foreign Service Act of 1946, as amended, authorizes the Secretary of State to provide for physical examinations for applicants for employment and for officers and employees of the Foreign Service who are United States citizens, and their dependents, including examinations necessary to establish disability or incapacity for retirement purposes. In addition, the Act authorizes the Secretary of State to provide for administration of inoculations and vaccinations for such officers and employees (22 U.S.C. 1158).

(2) Physical examinations may be conducted, whenever practicable, by medical officers at naval medical facilities, and immunizations may be furnished upon presentation of written authorization from an appropriate Department of State official. The authorization, in duplicate, will include the type of examination or immunization required and state that the individual is entitled to services at the expense of the Department of State. Reports of physical examinations shall be submitted as requested by the letter of authorization.

(g) *Charges and collections.* All charges and collections for beneficiaries of the State Department shall be made at the activity level for BUMED-managed activities, and in accordance with the Navy Comptroller Manual (vol. 3, chap. 5, sec. 2, subsec. 5) for non-BUMED-managed activities. Charges for inpatient and outpatient care shall be in accordance with the rates prescribed in BUMED Instruction 6320.4 series.

§ 728.68 Peace Corps.

(a) *Authority.* The Secretary of Defense has authorized medical care for Peace Corps volunteers and volunteer leaders to the same extent now authorized for officers and employees of the Foreign Service. Such care will be afforded when the availability of space and facilities and the capabilities of the professional staff permit.

(b) *Authorization for physical examination, treatment, and/or admission.* Peace Corps Volunteers, volunteer leaders, and dependents of volunteer leaders may be furnished inpatient and outpatient care in naval medical facilities upon written request from an appropriate Peace Corps official. The written authorization shall include complete identification of the volunteer, volunteer leader, or his dependent; nature of the authorization and/or a statement that the illness or injury was incurred abroad; and that reimbursement will be made.

(c) *Medical care authorized.* (1) Peace Corps volunteers, volunteer leaders, and dependents of volunteer leaders may be furnished inpatient and outpatient care in naval medical facilities for an illness or injury incurred abroad upon written request from an appropriate Peace Corps official and subject to the availability of space and facilities and the capabilities of the medical staff. The medical care of Peace Corps volunteers, volunteer leaders, and dependents of volunteer leaders shall not interfere with the primary mission of the naval medical facility. In the event that a Peace Corps volunteer, volunteer leader, or his dependent is admitted in an emergency without the required written request, the commanding officer of the naval medical facility shall obtain proper written authorization as soon as possible from the appropriate Peace Corps official. Dental care shall be limited to the relief of pain or other emergency measures.

(2) If it is determined that a Peace Corps volunteer, volunteer leader, or his dependent requires prolonged hospitalization, the commanding officer

of the naval medical facility shall report the case to the appropriate Peace Corps official and request authority to return the patient to the United States. Dependent patients requiring prolonged hospitalization who decline evacuation shall be released to the custody of their sponsor.

(3) Complete physical examinations or any part thereof may be conducted. Reports of physical examinations shall be submitted as requested by the letter of authorization. The authorization, in duplicate, shall include the type of examination required.

(4) Immunizations may be furnished upon written authorization from an appropriate Peace Corps official. The authorization, in duplicate, shall include the type of immunization required.

(d) *Charges and collections.* At BUMED-managed activities, charges and collections for outpatient visits, examinations, or immunizations shall be made at the activity level; charges and collections for inpatient service shall be made at BUMED level. For non-BUMED-managed activities, all charges and collections shall be made in accordance with the Navy Comptroller Manual (vol. 3, chap. 5, sec. 2, subsec. 5).

Subpart H—Other Persons

§ 728.71 Former women members of the Armed Forces—maternity care.

(a) *Eligibility.* Former women members of the Armed Forces separated from active duty or from the service because of pregnancy, or separated from the service for reasons other than pregnancy who are found to have been pregnant at the time of separation may be provided maternity care at naval medical facilities, subject to the provisions of Subpart A of this part.

(b) *Authorized care.* Authorized maternity care includes medical and surgical care incident to the pregnancy, including prenatal care, hospitalization, confinement, and postnatal care in the hospital or as an outpatient not to exceed 6 weeks following delivery.

(c) *Application.* In making application for maternity care, a former enlisted woman should present her discharge certificate or a photostat thereof. An officer should present a certified copy of her request for resignation (if she was separated through acceptance of resignation) and her separation orders. A physician's certification will be accepted in any case where a woman has been separated for reasons other than because of pregnancy and it can be reasonably determined that the condition of pregnancy existed at the time of separation. At the time of separation, such pregnant women personnel shall be advised to register at a military medical activity, where suitable facilities are available, at least 30 days prior to anticipated date of delivery. In areas where there is more than one military facility providing maternity care, personnel must apply to the medical facility of the service from which they were separated if one is available in that community. Referral to other medical facilities may be made only when bed space is not available in a medical facility of the service from which the individual was separated.

(d) *The child.* The military departments assume responsibility for care of the child only during the mother's hospitalization, and further arrangements for the child must be made by the mother. If the mother contemplates release of the child for adoption, all arrangements must be made by the mother with local civil authorities in advance of hospitalization. In such cases, discharge of the mother shall not be made until she personally releases the child to appropriate local authorities. Local Red Cross and public welfare activities are in a position to advise in such matters.

(e) *Charges and collections.* Charges shall be made for the value of a hospital ration or subsistence only and shall be collected locally. No charge shall be made for the newborn infant while the mother is an inpatient.

(f) *Overseas.* Women members of the Navy and Marine Corps who become pregnant will ordinarily be returned to the United States by the first suitable means of transportation for separation from the service. If, however, the health of the woman would be endangered by such transportation, she shall be retained overseas until deliv-

ery. The following procedure shall apply in the case of women members of the Navy and Marine Corps:

(1) Her commanding officer shall provide for her hospitalization at a naval medical facility if available within his command. If not available, the services of any other Federal hospital which may be available should be utilized. If a Federal hospital is not available, see Part 732 of this chapter regarding care in civilian facilities.

(2) She shall be returned to the United States as soon after delivery as her physical condition permits, except that she may remain as a patient in proximity to her infant if the latter is certified by a naval medical officer as unfit to travel. Until the mother is separated from the service the infant shall be treated as a dependent of military personnel. Return of an infant with its mother who is in the naval service is authorized. Orders and passenger lists shall indicate the name of the infant. If circumstances warrant, both individuals shall be classified as "patients" and ordered to a naval hospital in the United States which can be reached by the first suitable means of transportation. Separation of the woman from the naval service shall be effected as soon as possible thereafter. The infant may be admitted to the naval hospital pending the completion of the procedures for separation of its mother from the service.

[26 FR 12661, Dec. 29, 1961, as amended at 28 FR 7752, July 31, 1963]

§ 728.72 American Red Cross representatives.

(a) *Authority.* 10 U.S.C. 2602.

(b) *Outpatient care.* Accredited American Red Cross representatives assigned to naval activities may be furnished outpatient treatment at naval medical facilities for illnesses and injuries occurring while in performance of duties in the same manner as provided Federal civilian employees who are not beneficiaries of the Bureau of Employees' Compensation.

(c) *Other care.* Accredited American Red Cross representatives serving with the uniformed services in a locality where civilian medical facilities are not available or adequate, as aboard a naval vessel or outside the United States, shall be afforded medical care at available naval medical facilities to the same extent as members of the naval service. Dental care shall be limited to relief of pain or emergency measures.

(d) *Charges and collections.* No charge shall be made for outpatient care. Charges for hospitalization in the United States shall be at the general rate; outside the United States, charges shall be for value of hospital ration or subsistence only. Charges shall be collected locally.

(e) *Disposal of records.* Upon completion of treatment of an accredited representative of the American National Red Cross, the medical records including all clinical records and X-ray films shall be forwarded to the Medical Director, National Headquarters, American Red Cross, 18th and E Streets NW., Washington, D.C.

§ 728.73 Civilian employees.

(a) *Authority.* 5 U.S.C. 751–793; 24 U.S.C. 34; 5 U.S.C. 150; 10 U.S.C. 7205 and 7472; Executive Order 4071 of Sept. 4, 1924.

(b) *Health program for civilian employees.* Federal civilian employees of the Navy, including civilian marine seamen in the service of vessels operated by the Military Sea Transportation Service who are Federal civilian employees and paid from appropriated funds, shall be furnished authorized treatment for on-the-job illnesses and injuries, and physical examinations at naval medical facilities without charge under the Health Program for civilian employees, regardless of the day or time of day that treatment is given. Immunizations required by conditions of employment, such as for employment overseas and for dependents of employees, will also be given without charge. This program as prescribed in chapter 26, Manual of the Medical Department, applies worldwide. When a civilian employee of the Navy sustains a personal injury in performance of his duties, he will be provided medical care as prescribed by § 728.62.

(c) *Physical examinations for disability retirement.* Physical examinations in connection with disability retirement may be conducted at naval

medical facilities for Federal civilian employees upon request of authorized representatives of the U.S. Civil Service Commission. No charge shall be made for such examinations.

§ 728.74 Designees of the Secretary of the Navy.

The Secretary of the Navy may designate certain persons to be provided medical care. These designees may receive necessary care and treatment at naval medical facilities and shall be charged the general reimbursement or outpatient rate, as applicable, unless otherwise directed by the Secretary.

§ 728.75 Civilians under special circumstances.

(a) *Civilian-humanitarian.* Any member of the civilian population who suffers critical injury or accident in the presence of a Navy official or immediate vicinity of a naval medical facility may be admitted for humanitarian reasons to any naval activity having facilities for inpatient care at the discretion of the commanding officer if a naval medical officer determines that movement to a nongovernmental institution is likely to result in loss of life. The patient pays the general rate for hospitalization. Such a patient shall be classified as indigent only after reasonable attempts to collect charges for hospitalization have been unsuccessful in the opinion of the commanding officer. (5 U.S.C. 22; arts 0430, 0627, and 0970, U.S. Navy Regulations; 10 U.S.C. 6011; 24 U.S.C. 14 et seq.)

(b) *Recording.* First-aid treatment and emergency medical care rendered to members of the civilian population shall, in addition to such medical history as should be routinely recorded, be made the subject of an entry in the daily journal (Officer-of-the-Day Log).

(c) *Civilians attending National Police Academy.* Persons in attendance at the National Police Academy, Marine Barracks, Quantico, Va., may be admitted to the U.S. Naval Hospital at Quantico for emergency hospitalization in the following cases:

(1) Employees of the Federal Bureau of Investigation who are injured in the performance of duty may be entitled to medical care at the expense of the Bureau of Employees' Compensation and should be admitted and reported and beneficiaries of the Bureau of Employees' Compensation. Such employees also may be admitted for treatment of disease and in this case are admitted and reported as civilian humanitarian patients.

(2) Representatives of police organizations of various States, cities, and countries who are in attendance at the National Police Academy may be hospitalized as civilian humanitarian patients with the approval of the Commanding General.

(d) *Charges and collections.* No charges shall be collected locally from civilians hospitalized as beneficiaries of other Government agencies. When hospitalized and classed as Civilian, Humanitarian, Nonindigent, charges at the general rate shall be collected locally.

§ 728.76 U.S. Navy technicians.

(a) *Authority.* OPNAV Instruction 5720 series.[1]

(b) *Authorized care.* U.S. Navy technicians may be given medical care while serving with the Navy in a locality where civilian medical care is not obtainable, such as on board a naval vessel or outside the United States. This is not to be construed to include dental treatment except for the relief of pain or other emergency.

(c) *Charges and collections.* Charges shall be made for subsistence only and collected locally.

§ 728.77 Other persons outside the United States.

(a) *Authority.* 24 U.S.C. 34, 35; 42 U.S.C. 1701.

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[1] Paragraph 4a of OPNAV Instruction 5720.3A of Nov. 15, 1955, defines a U.S. Navy technician as follows:

a. *Technician.* A technician is a male civilian citizen of the United States (not an employee of the Naval Establishment) who is accredited to take passage in naval vessels or Government aircraft or to enter overseas areas under naval sponsorship for the purpose of observing the operation or installation of equipment and armament and/or assisting in the maintenance and repair of such equipment, and for scientific research. He is a manufacturer's technician or engineer or a contractor's representative.

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(b) *Eligibility.* When not otherwise authorized, outpatient and inpatient care may be provided at naval medical facilities outside the United States and in Alaska and Hawaii to the following persons:

(1) Officers and employees of any department or agency of the Federal Government.

(2) Employees of a contractor with the United States or his subcontractors.

(3) Dependents of above persons.

(4) In emergencies, other persons designated by the Secretary of the Navy.

(5) Civilian marine seamen who are Federal civilian employees in service of vessels operated by the Military Sea Transportation Service; American seamen aboard vessels chartered by the Military Sea Transportation Service; persons engaged by the United States under personal services contract; civilian employees paid from nonappropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy exchanges, Marine Corps exchanges, officers' and noncommissioned officers' open messes, enlisted men's clubs, special service activities; persons or organizations of the United States under the jurisdiction of the Department of Defense and conducted for the mental, physical and morale improvement of personnel of the military service and their dependents; persons employed or engaged for personal services by an American employer providing welfare or similar services for the benefit of the Armed Forces authorized by the Secretary of Defense; employees of commercial airlines under contract to the Military Air Transport Service; officers and crews of U.S. airlines; shipwreck or enemy action refugees; humanitarian cases.

(c) *Limitation.* Medical care for the persons listed in paragraph (b) of this section shall be provided only where reasonably accessible and appropriate non-Federal medical facilities are not available. Hospitalization is authorized for acute medical and surgical conditions. Hospitalization is not authorized for nervous and mental disorders, chronic diseases, or those requiring domiciliary care.

(d) *Charges and collections.* Charges for hospitalization and outpatient treatment shall be at the extracontinental rate and shall be collected locally.

§ 728.78 Prisoners of war and similar persons.

(a) *Authority.* 31 U.S.C. 649a.

(b) *Persons authorized care.* Medical care may be provided at naval medical facilities for:

(1) Prisoners of war and other persons in the Navy or Marine Corps custody whose status is determined to be similar to prisoners of war, and persons detained in such custody pursuant to Presidential proclamation.

(2) Prisoners of the Navy or Marine Corps whose punitive discharge has been executed and who are hospitalized beyond execution of sentence.

(c) *Charges and collections.* No charges shall be made for hospitalization furnished prisoners of war or similar persons.

Subpart I—Adjuncts to Medical Care

§ 728.81 Adjuncts to medical care.

(a) *Definition.* Adjuncts to medical care include prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, and similar medical supports or aids which are required for the proper care and treatment of the patient.

(b) *Scope.* This subpart covers the provision of adjuncts at naval medical facilities. Part 732 of this chapter deals with referrals to civilian sources.

[26 FR 12661, Dec. 29, 1961, as amended at 28 FR 7752, July 31, 1963]

§ 728.82 Policy.

(a) *Assistance in overcoming physical handicap.* Adjuncts to medical care shall be provided at naval medical facilities to eligible persons as inpatients or outpatients when, in the opinion of the medical officer, the device will offer substantial assistance in overcoming the physical handicap and thereby contributing to the well being of the patient.

(b) *Period of service.* Unless necessary for humanitarian reasons, orthopedic and prosthetic appliances are not to be furnished on an elective basis to members of the naval service with short periods of service when the defect requiring the appliance existed prior to entry into the service and when these members are to be separated from the service because of these defects. For active duty members, the initial allowance of orthopedic footwear and orthopedic alterations to standard footwear shall be in the same quantity as provided in the initial clothing allowance.

(c) *Number.* The number of orthopedic and prosthetic appliances issued or replaced for authorized recipients shall be based upon the individual's requirements as determined by the medical officer and shall be consistent with the highest standards of modern medicine.

(d) *Costs.* Costs of adjuncts to medical care are chargeable to the operation and maintenance funds of the medical facility furnishing the care and adjuncts.

(e) *Referral to VA.* Retired members of the uniformed services who served in either World War I, World War II, or Korean War, as well as persons otherwise eligible by law who have elected to receive disability compensation from the Veterans' Administration for service-connected disease or injury, should be advised that they may obtain orthopedic and prosthetic appliances for service-connected disabilities from a VA facility.

(f) *Dependents.* Dependents shall not be provided artificial limbs, artificial eyes, hearing aids and parts, orthopedic footwear, or spectacles.

Exception: Dependents may be provided such items if available from Government stocks at invoice cost under the following situations:

(1) Outside the United States.

(2) At a station within the United States where adequate civilian facilities are not available, and the station has been designated as remote by the Secretary of the Navy upon approval of the Secretary of Defense.

§ 728.83 Chart of adjuncts to medical care.

The chart and following footnotes provide information relative to adjuncts which may be furnished the several categories of patients eligible for medical care at naval medical facilities.

Item	Active duty members of the uniformed services	Retired members of the uniformed services	Dependents	Beneficiary of other Federal agencies to whom reimbursement applies
Artificial limbs	Yes	Yes	No	Yes. [1]
Joint braces	do	do	do	Do.
Orthopedic shoes	do	do	do	No.
Spectacles [2]	do	do	do	Do.
Contact lens [2]	do [3]	do [4]	do	Do.
Artificial eyes	do	do	do	Yes.
Cosmetic restorations	do	do	do	No.
Hearing aids [5,6]	do	do	do	Do.
Replacement parts for hearing aids [7].	do	do [7]	do	Do.
Wheel chairs [8]	do	do	Yes	Yes.
Crutches [8]	do	do	do	Do.

[1] When, in the opinion of cognizant medical authority, such appliances are medically indicated for the completion of treatment.

[2] Further information may be found in BUMED Instruction 6810.4 series.

[3] Issued at U.S. naval hospitals only for postocular surgery or service-incurred disease or disability where their use is mandatory for retention of personnel in an active status. Not to be issued solely for cosmetic reasons. Further information may be found in BUMED Instruction 6810.4 series.

[4] Issued at U.S. naval hospitals only for postocular surgery or service-incurred disease or disability when considered justified by the medical officer in charge as offering substantial assistance to the patient in overcoming his handicap and thereby contributing to his well-being. Not to be issued solely for cosmetic purposes.

[5] Initial issue will include, in addition to the hearing aid, one spare receiver cord, approximately 1 month's supply of batteries, and a statement indicating make, model, type of receiver, serial number, code, part number, "B" battery voltage, and type of "A" and "B" batteries required.

[6] Replacement of hearing aids shall be upon the same basis as the initial issue and except in unusual circumstances shall not be effected within 2 years of the initial furnishing of the last replacement of the appliance.

[7] Servicing of hearing aids and replacement parts thereof shall be limited to the manufacturer's guarantee and shall be based upon a personal relationship between the recipient and the manufacturer only.

[8] On custody basis at the discretion of the medical officer.

[26 FR 12661, Dec. 29, 1961, as amended at 27 FR 9451, Sept. 22, 1962]

Subpart J—Charges, Collections, and Reports

§ 728.91 Charges and collections.

Charges for hospitalization and/or subsistence furnished pay patients shall be collected in the manner and at the rate indicated in the table under § 728.94. Detailed information concerning methods of collection, disposition of locally collected funds, and required reports for naval hospitals and medical centers are contained in the Financial Management Handbook (NAVMED P-5020), and NAVCOMPT Manual and Instructions for station hospitals and dispensaries.

§ 728.92 Rates.

Rates to be charged for hospitalization and hospital rations furnished pay patients are promulgated by BUMED Instruction 6320.4 series. The rates are defined as follows:

(a) *Interagency.* The per diem rate prescribed by the Bureau of the Budget for reimbursement between uniformed services when members or retired members of the uniformed services are hospitalized in a facility of a service other than their own. Also, for use in all cases of reimbursement between Federal agencies for patients authorized care completely at Government expense unless a different rate is established by or pursuant to a specific requirement of law.

(b) *General.* The per diem rate prescribed by the Bureau of the Budget for reimbursement between uniformed services when dependents of members or retired or deceased members are hospitalized in a facility of a service that is not that of the member. Also for use for patients authorized to receive care partially at Government expense or at no expense to the Government unless a different rate is established by or pursuant to a specific requirement of law.

(c) *Dependents.* The per diem rate prescribed by the Dependents' Medical Care Act to be collected locally from the patient or sponsor for hospitalization furnished dependents of members or retired or deceased members.

(d) *Hospital ration.* The per diem rate prescribed periodically by the Chief, Bureau of Medicine and Surgery, as the value of one hospital ration.

(e) *Extracontinental and Alaska.* The rate established by Executive Order 9411 (3 CFR 1943-48 Comp., p. 290) for hospitalization or outpatient service for other than dependents of the uniformed services:

(1) Outpatient treatment, examination, or consultation	$1
(2) Inpatient treatment, per diem	5

(f) *Examination.* This rate is contained in BUMED Instruction 6320.4 series.

[26 FR 12661, Dec. 29, 1961, as amended at 27 FR 9451, Sept. 22, 1962]

§ 728.93 Reports.

(a) *General.* Reports of hospitalization of pay patients at naval hospitals and medical centers shall be submitted to the Bureau as prescribed by the Financial Management Handbook. Station hospitals and dispensaries shall submit reports as required by NAV COMPT Manual and Instructions.

(b) *Report of Treatment Furnished Pay Patients, Hospitalization Furnished (Part A), DD Form 7, Report Symbol MED-6322-1*—(1) *General.* This report, accompanied by appropriate substantiation if necessary, shall be submitted in accordance with existing instructions.

(2) *Preparation instructions.* The numbered spaces on the report form shall be completed to show the following information:

(i) 1—*Installation providing hospitalization.* Enter name and location of the Navy and/or Marine Corps activity submitting the report. Comply with current security regulations, when applicable.

(ii) 2—*Month and year covered by this report.* Enter the calendar month and year of the report period.

(iii) 3—*Category of patients.* Enter category of patients reported. A separate report shall be utilized and sub-

mitted in the case of each different category of pay patient.

(iv) 4—*Authority for admission.* State regulation or directive authorizing admission. In cases where documentary authorization is required, attach copy of authorization to the DD Form 7 at time of submission of report.

(v) 5—*Name and serial number.* Complete as appropriate. (Special instructions for station hospitals and dispensaries: DD Form 7 reports prepared for members of the uniformed services and their dependents shall NOT list each individual, but shall show instead in item 5 the category of patients in total and in item 14 the total for the category. Item 11 shall be blank.)

(vi) 6—*Grade.* Complete as appropriate.

(vii) 7—*Organization.* Enter organization of each pay patient, military or other Federal agency, as applicable, unless other information is required by regulations. For merchant seamen, enter the name of vessel to which attached; if vessel is not prefixed by the letters USNS, include name of owner or operator.

(viii) 8—*Diagnosis.* Enter title in language commonly accepted by professional usage, preferably in terms of titles listed in the Joint Armed Forces Statistical Classification and Basic Diagnostic Nomenclature of Diseases and Injuries (NAVMED P-1294).

(ix) 9—*Admission date.* Enter month, day, and year in that order. No sick days shall be accrued for pay patients admitted and discharged from the sicklist on the same day, nor shall fractional days be considered.

(x) 10—*Discharge date.* Enter month, day, and year in that order. If a patient is remaining on the sicklist at the end of the month being reported, enter only the notation "Remaining" in this column.

(xi) 11—*Total.* Enter the total days for the month reported for each individual patient. When for any reason a patient being reported is subsisted out or on leave during the period reported, information to that effect shall be so reported on the DD Form 7, to show the total days hospitalized and total days subsisted out or on leave. Use abbreviation "SO" for subsisted out and "OL" for on leave. Sick days shall be computed in all cases by excluding the day of admission and including the day of discharge.

(xii) 12—*Date.* Enter the date of certification of report by the commanding officer or his duly authorized representative.

(xiii) 13—*Certified correct.* Enter the name, grade, and organization of the commanding officer or his duly authorized representative certifying the accuracy and completeness of the report. Signature required on original form only.

(xiv) 14—*Total days hospitalized.* Enter grand total of all days hospitalized irrespective of days subsisted out and/or on leave. This figure shall be verified to insure that all computations have been entered correctly.

(3) *Footnote data for station hospitals and dispensaries.* All DD Forms 7 shall show as a footnote the appropriation, subhead, allotment, budget project, and expenditure account to be credited and the accounting number of the activity accounting for the receivable.

(1 CFR 18.14, and Part 21, Subpart B)

[26 FR 12661, Dec. 29, 1961, as amended at 45 FR 8599, Feb. 8, 1980]

§ 728.94 Table of pay patients, charges, and collections

	Charges	Collections
(a) Members, uniformed services and reserve components, and retired members uniformed services—		
(1) Navy and Marine Corps:		
(a) Officers, active duty only (including aviation cadets).	Hospital ration [1]	Bureau, checkage on S&A 534 by local command. [1]
	Subsistence [2]	Local. [3]
(b) Officers, training duty, in a pay status.	Hospital ration [1]	Do.
	Subsistence [2]	Do.

	Charges	Collections
(c) Officers, training duty, not in a pay status.	Hospital ration [1]	Bureau.
	Subsistence [2]	Do.
(d) Officers, retired	Hospital ration [1]	Local.
	Subsistence [2]	Do.
(e) Enlisted, all categories (including midshipmen, officer candidates, NROTC, and reserve officer candidates).	Average cost of ration. [1]	Do.
(2) Other uniformed services:		
(a) Officers, all categories	Hospital ration [1]	Do.
	Subsistence [2]	Do.
(b) Dependents, uniformed services	Dependent rate	Do.
(c) Members, foreign military services, and their dependents:		
(1) Officers, all categories	Hospital ration [1]	Do.
	Subsistence [2]	Do.
(2) Enlisted, Canadian Armed Forces	Hospital ration [1]	Do.
	Subsistence [2]	Do.
(3) Dependents	Dependent rate	Do.
(d) Beneficiaries, other Federal agencies:		
(1) Beneficiaries, VA, in United States	interagency	Do.
(2) Beneficiaries, BEC, in United States	do	Do.
outside United States	do	Bureau. [1]
		Local. [2]
(3) Beneficiaries, Department of State:		
(a) Officers and employees, Foreign Service	do	Bureau. [1]
		Local. [2]
(b) Dependents, officers, and employees Foreign Service	General rate	Bureau. [1]
		Local. [2]
(e) Other persons:		
(1) Former women members Armed Forces-Maternity	Hospital ration [1]	Do.
	Subsistence [2]	Do.
(2) American Red Cross representatives:		
(a) In United States less Alaska	General rate	Do.
(b) Outside United States and in Alaska	Hospital ration [1]	Do.
	Subsistence [2]	Do.
(3) Secretary of Navy designees:		
(a) In United States less Alaska	General rate	Do.
(b) Outside United States and in Alaska.	Extracontinental rate	Do.
(4) Civilian, humanitarian:		
(a) In United States less Alaska	General rate	Do.
(b) Outside United States and in Alaska.	Extracontinental rate	Do.
(5) U.S. Navy technicians outside United States	Hospital ration [1]	Do.
	Subsistence [2]	Do.
(6) Other persons outside United States and in Alaska.	Extracontinental rate	Do.

[1] U.S. naval hospitals and hospital ships.

[2] Other activities—station hospitals and dispensaries not BUMED managed.

PART 730—ADMINISTRATIVE DISCHARGES AND RELATED MATTERS CONCERNING SEPARATIONS FROM THE NAVAL SERVICE

Subpart A—Navy

Sec.

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AUTHORITY: Secs. 280, 1162, 1163, 6291-6298, 70A Stat. 14, 89, 391-393, as amended, 76 Stat. 508, 517, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 133, 280, 1162, 1163, 1168, 6291-6298, unless otherwise noted.

Subpart A—Navy

§ 730.1 General information and policy.

(a) *Definitions*—(1) *Member.* An enlisted man or an enlisted woman of the U.S. Navy or U.S. Naval Reserve.

(2) *Discharge.* Complete severance from all military status in the U.S. Navy or U.S. Naval Reserve.

(3) *Release from active duty.* Termination of active-duty status and transfer to the inactive reserve.

(4) *Separation.* A general term which includes discharge and release from active duty.

(5) *Administrative separation.* Discharge or release from active duty upon expiration of enlistment or required period of service, or prior thereto, in the manner prescribed in this subpart, but specifically excluding separation by sentence of general or special court-martial.

(6) *Military record.* Comprises a member's behavior while in military service, including general comportment and performance of duty.

(7) *Prior enlistment or period of service.* Service in any component of the Armed Forces, including the Coast Guard, which culminated in the issuance of a discharge certificate or certificate of service.

(8) *Administrative discharge board.* A board appointed to render findings based on facts obtaining or believed to obtain in a case, and to recommend retention in the service or discharge and reason for and the type of separation or discharge certificate to be furnished.

(9) *Respondent.* A member who has been notified that action has been initiated with a view toward discharging him under a specified service regulation.

(10) *Counsel.* A lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice (10 U.S.C. 827(b)(1)) unless the commanding officer or other designated authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel.

(11) *Honorable discharge.* Separation with honor.

(12) *General discharge.* Separation under honorable conditions.

(13) *Undesirable discharge.* Separation under conditions other than honorable.

(b) *Formal reasons for discharge.*
(1) Expiration of enlistment.
(2) Fulfillment of service obligation.
(3) Disability.
(4) Convenience of the Government.
(5) Dependency or hardship.
(6) Minority.
(7) Unsuitability.
(8) Security.
(9) Unfitness.
(10) Misconduct.

(11) Sentence of court-martial.

(c) *Types of discharges with corresponding character.*

Type of discharge	DD Form	Character of separation	Given by—
Honorable discharge.	256N	Honorable	Administrative action.
General discharge.	257N	Under honorable conditions.	Do.
Undesirable discharge.	258N	Conditions other than honorable.	Do.
Bad conduct discharge.	259N	do	General or special court-martial.
Dishonorable discharge.	260N	Dishonorable	General court-martial.

(d) *Policy.* (1) The Chief of Naval Personnel has the right and the duty to separate from the service with an appropriately characterized discharge certificate members who clearly demonstrate that they are not qualified for retention.

(2) Administrative discharge action under the provisions of §§ 730.10(b) (1) through (4) and 730.12(b) (1) through (4) will not normally be initiated until a member has been counseled concerning his deficiencies and afforded a reasonable opportunity to overcome them. Members who are being considered for discharge for reason of unsuitability who have at least 8 years' continuous active duty shall be afforded the right to administrative-discharge-board privileges and counsel as required by § 730.10(f).

(3) No member shall be discharged under conditions other than honorable unless he is afforded the right to present his case before an administrative discharge board with the advice and assistance of counsel and unless such discharge is supported by approved board findings and an approved board recommendation for an undesirable discharge. However, an undesirable discharge may be issued by the Chief of Naval Personnel without board action if the member is beyond military control by reason of prolonged unauthorized absence, or waives in writing his right to board action.

(4) The Chief of Naval Personnel may direct issuance of the type of discharge recommended by an administrative discharge board or a more favorable discharge but will not direct a discharge less favorable than that recommended by the board.

(5) Notwithstanding an administrative-discharge-board recommendation for retention, the Chief of Naval Personnel may direct separation when warranted by the circumstances of a particular case. In this event the discharge will be effected under honorable conditions and the member thus separated will be awarded an Honorable or General Discharge certificate as warranted by the member's military record.

(6) A member subject to discharge because of conviction by civil court will be processed for discharge notwithstanding the fact that he has filed an appeal or has stated his intention to do so. It will be the general policy of the Chief of Naval Personnel to withhold final action pending outcome of the appeal unless otherwise directed by the Secretary of the Navy.

(7) No member will be administratively discharged under conditions other than honorable if the grounds for such discharge action are based wholly or in part upon acts or omissions for which the member has been previously tried by court-martial resulting in acquittal or action having the effect thereof except when such acquittal or equivalent disposition is based on a legal technicality not involving the basic issue of guilt.

(8) No member will be subjected to administrative-discharge-board action based upon conduct which has previously been the subject of administrative-discharge-board proceedings, when the evidence before the subsequent board would be the same as the evidence before the previous board, except as provided in § 730.15a(a)(6) and in those cases where the findings of the previous board favorable to the

respondent are determined to have been obtained by fraud or collusion.

(9) The Chief of Naval Personnel may suspend execution of an approved administrative discharge to afford a deserving member a specified probationary period of sufficient length to demonstrate successful rehabilitation.

(e) *Type of discharge certificate.* Except as indicated in this paragraph, the type and character of discharge issued upon administrative separation from current enlistment or period of service will be determined solely by the member's military record during that enlistment or period of service, plus any extensions thereof prescribed by law or by the Secretary of the Navy, or effected with the consent of the member (§ 730.2). The following shall not be considered:

(1) Prior service activities, including but not limited to records of conviction by courts-martial, records of nonjudicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed.

(2) Preservice activities, except misrepresentations including omission of facts which if known would have precluded, postponed or otherwise affected the member's eligibility for enlistment or induction.

(f) *Retention or separation.* In determining whether a member should retain his current military status or be administratively separated, his entire military record, including records of nonjudicial punishment imposed during a prior enlistment or period of service, all records of conviction by courts-martial, or any other factors which are material and relevant, may be evaluated. Administrative discharge boards and higher authority charged with making such determinations will consider records of nonjudicial punishment imposed during a prior enlistment or period of service only if such records of punishment would have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

(1) Cases in which the circumstances may warrant use of such records shall ordinarily be limited to those involving patterns of conduct which would become manifest only over an extended period of time.

(2) When a record of nonjudicial punishment imposed during a current enlistment or period of service is considered, isolated incidents and events which are remote in time, or have no probative value in determining whether retention or administrative separation should be effected, shall have minimal influence on the determination.

(g) *Periodic explanation.* Commanding officers will prescribe appropriate internal procedures for periodic explanation to members of the types of discharge certificates and basis for issuance and the possible effects of various certificates upon reenlistment, civilian employment, veterans' benefits and related matters. As a minimum such explanation should take place each time the provisions of article 137 of the Uniform Code of Military Justice (10 U.S.C. 937) are complied with (Bureau of Naval Personnel Manual, articles C-1401, C-1401A, and C-10301(7)). Failure on the part of the member to receive or to understand such explanation, however, shall in no event be considered a defense in an administrative discharge proceeding or a bar thereto.

(h) *Separation counseling.* The purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records (Parts 723 and 724 of this chapter) will be explained during the separation processing of any member being discharged under other than honorable conditions.

(i) *Review of §§ 730.12 and 730.13.* When considering an individual for administrative discharge insure that the member is processed under the appropriate sections of this part. For example, chronic military misbehavior or serious involvement with civilian authorities should not be used as the basis for unsuitability processing unless there is a duly diagnosed psychiatric disorder which significantly contributed to the misbehavior. Military misbehavior and involvement with civilian police subject the respondent to the possibility of undesirable discharge, and therefore, should

normally be processed under the provisions of § 730.12 or § 730.13 as appropriate.

[31 FR 10185, July 28, 1966]

§ 730.2 Determination of types of discharges for enlisted personnel.

(a) *Honorable discharge.* An honorable discharge is a separation from the service with honor. A separation with an honorable discharge may be effected by the individual's commanding officer or higher authority when the individual is eligible for or subject to discharge and it has been determined that he merits an honorable discharge under the standards prescribed in this paragraph. Issuance of an honorable discharge is conditioned upon:

(1) Eligibility for discharge for one of the following reasons:

(i) Expiration of enlistment.

(ii) Fulfillment of service obligation.

(iii) Disability.

(iv) Convenience of the Government.

(v) Dependency or hardship.

(vi) Minority.

(vii) Unsuitability.

(viii) Security.

(ix) When honorable discharge is directed by the Chief of Naval Personnel.

(2) Proper military behavior and proficient, industrious performance of duty having due regard to the rate held and the capabilities of the individual concerned.

(i) *Personnel on active duty.* During the enlistment, induction, or other service obligation the individual must have made a final average of not less than 2.7 and an average of not less than 3 in military behavior (article C-7821 of the Bureau of Naval Personnel Manual). An individual who is to be administratively discharged without having received evaluation marks (e.g., a recruit discharged by reason of unsuitability) should normally be issued an honorable discharge if he made a sincere effort to maintain proper military behavior and to perform his duties in a proficient and industrious manner.

(ii) *Personnel on inactive duty.* Since evaluation marks are not given a person on inactive duty, an honorable discharge will normally be issued unless the reservist has performed active duty of 90 days or more during his Naval Reserve enlistment or service obligation and his service upon his most recent release therefrom was characterized as other than honorable, or unless he was transferred from the Regular Navy to the Naval Reserve in order to fulfill his service obligation and his service while on such active duty was characterized as other than honorable.

An individual who is otherwise ineligible may receive an honorable discharge if he has during his current enlistment or other current period of service been awarded a Medal of Honor, Navy Cross, Distinguished Service Medal, Silver Star Medal, Legion of Merit, Distinguished Flying Cross, Navy and Marine Corps Medal, Bronze Star Medal, Air Medal, Commendation Ribbon, Gold Life Saving Medal, Silver Life Saving Medal or any other Armed Forces award corresponding to any of these decorations, or is being discharged as a result of disability incurred in line of duty. In each case the individual's military record should be fully considered in connection with any action taken.

(b) *General discharge.* A general discharge is a separation from the service under honorable conditions issued to an individual discharged for any of the reasons listed in paragraphs (a)(1) (i) through (viii) of this section and whose military record is not sufficiently meritorious to warrant an honorable discharge. Such discharge may also be directed or authorized by the Chief of Naval Personnel by reason of unfitness or misconduct. A separation with a general discharge may be effected by the individual's commanding officer or higher authority when the individual is eligible for or is subject to a general discharge and it has been determined that a general discharge is warranted under prescribed standards. In the case of a member who is to be discharged without having received evaluation marks (e.g., a recruit or an inactive reservist discharged by reason of unsuitability), issuance of a general discharge is warranted where there is evidence of misbehavior, bad faith, or failure to make a proportionate effort having due regard for his rate and ca-

pabilities. The command effecting such discharge should summarize on page 13 of the service record the considerations which support the general discharge, such as concealment or misrepresentation of defects or deficiencies in making application for enlistment which were not considered sufficiently serious to warrant processing under § 730.13, a record of disciplinary infractions in training, culpable failure to conform to minimum standards for recruit or reserve training, or poor attitude.

(c) *Undesirable discharge.* An undesirable discharge is an administrative separation from the service under conditions other than honorable. It is issued for unfitness, misconduct, or security reasons.

(d) *Bad conduct discharge.* A bad conduct discharge is a separation from the service under conditions other than honorable. A bad conduct discharge may be given only by approved sentence of general or special courts-martial.

(e) *Dishonorable discharge.* A dishonorable discharge by its own connotation is a separation from the service under dishonorable conditions. Dishonorable discharges may be given only by approved sentences of general courts-martial and are appropriate for serious offenses warranting dishonorable separation as included punishment.

[24 FR 7441, Sept. 16, 1959, as amended at 26 FR 9529, Oct. 10, 1961; 31 FR 10186, July 28, 1966]

§ 730.3 Summary of matters relating to discharges of enlisted and inducted personnel.

(a) The following tables of matters relating to discharges are furnished as a handy summary. More detailed instructions are contained in referenced sections of this part and articles of the Bureau of Naval Personnel Manual. The entries in the columns "Mileage," "Transportation in kind" and "Cash allowance" are shown for convenience but shall not be considered as authoritative. The Joint Travel Regulations, U.S. Navy Travel Instructions, and the Navy Comptroller Manual, as appropriate, should be consulted in such matters.

(1) *Table of matters relating to honorable and general discharges.* (Articles referred to are articles of the Bureau of Naval Personnel Manual.)

Reason for discharge	Authority	Mileage	Issue of civilian clothing (§ 730.16)	Cash allowance (§ 730.16)	Retain and wear uniform to home (§ 730.16)	Recoupment of reenlistment bonus (Article A-4204)
Expiration of enlistment.	§ 730.4 and Article C-10317.	Yes	No	No	Yes [1]	No.
Fulfillment of service obligation.	§ 730.4 and Article C-10317.	do	do	do	do [1]	Do.
Disability	§ 730.5	do	do	do	do [1]	Do. [2]
Convenience of the Government.	§ 730.6	do	do	do	do [1]	Do. [2]
Dependency or hardship.	§ 730.8	do	do	do	do [1]	Do.
Minority	§ 730.9	do	do	do	do [1]	Do.
Unsuitability.	§ 730.10	do	Yes	do	No	Do.
Security	§ 730.11	do	do	do	do	(3).
Unfitness	§ 730.12	do	do	do	do	Yes.

Reason for discharge	Authority	Mileage	Issue of civilian clothing (§ 730.16)	Cash allowance (§ 730.16)	Retain and wear uniform to home (§ 730.16)	Recoupment of reenlistment bonus (Article A-4204)
Misconduct.	§ 730.13	do	do	do	do	Do.

[1] Unless discharged to accept direct commission or appointment as an officer or warrant officer, persons who have served less than six months on active duty subsequent to last authorization to an initial clothing allowance may retain only one complete uniform. (See § 730.16(d).)
[2] Reenlistment bonus is to be recouped in the case of separation by reason of disability resulting from misconduct, willful neglect, or incurred during a period of unauthorized absence.
[3] Reenlistment bonus is to be recouped in the case of women members whose marriage constitutes the sole basis for such discharge, and in other cases when specifically directed by the Chief of Naval Personnel under the special and unusual circumstances discussed in article A-4204.
[4] When directed by Chief of Naval Personnel.

(2) Table of matters relating to undesirable, bad conduct, and dishonorable discharges. (Articles referred to are articles of the Bureau of Naval Personnel Manual.)

Reason for discharge	Authority	Transportation in kind	Issue of civilian clothing (§ 730.16)	Cash allowance (§ 730.16)	Retain and wear uniform to home (§ 730.16)	Recoupment of reenlistment bonus (Article A-4204)
Security	§ 730.11	Yes	Yes	Yes	No	(1).
Unfitness	§ 730.12	do	do	do	do	Yes.
Misconduct.	§ 730.13	do	do	do	do	Do.
Court-martial sentence to BCD or DD.	Article C-10314	do	do	do	do	Do.

[1] When directed by Chief of Naval Personnel.

[24 FR 7442, Sept. 16, 1959, as amended at 28 FR 590, Jan. 23, 1963]

§ 730.4 Separation of enlisted personnel by reason of expiration of enlistment, fulfillment of service obligation, or expiration of tour of active service.

(a) Unless voluntarily or involuntarily retained beyond normal expiration of term of service as provided in this section or in applicable directives promulgated by the Secretary of the Navy or the Chief of Naval Personnel, enlisted and inducted personnel of the Regular Navy and enlisted personnel of the Naval Reserve serving on active duty shall be separated as follows:

(1) *Expiration of enlistment.* Discharge upon normal date of expiration of enlistment, extension of enlistment, or period of induction, provided that the individual does not have an additional service obligation as set forth in article C-1402 of the Bureau of Naval Personnel Manual. See paragraph (b) of this section for action to be taken if the individual has such an additional service obligation.

(2) *Fulfillment of service obligation.* Discharge upon fulfillment of service obligation acquired under the provisions of section 4(d) of the Universal Military Training and Service Act as amended (50 U.S.C. App. 454(d), 10 U.S.C. 651), provided no portion of the contractual enlistment or extension thereof remains to be served. Article C-10320 of the Bureau of Naval Personnel Manual contains information as to the requirements for fulfillment of service obligation.

(3) *Expiration of tour of active service.* Release to inactive duty upon completion of period of active obligated service or period of such service as voluntarily or involuntarily extended. (Applicable to Naval Reservists who have time remaining in their enlistment contract and/or who have an additional service obligation as set forth

in article C-1402 of the Bureau of Naval Personnel Manual).

(b) Regular Navy personnel, including inductees, having an additional service obligation remaining upon completion of their enlistment, extension of enlistment, or period of induction shall, if otherwise eligible therefor, be transferred to the Naval Reserve and released to inactive duty in accordance with the provisions of article C-10319 of the Bureau of Naval Personnel Manual. Exceptions to the foregoing are those cases in which the individual desires, and is accepted for, immediate reenlistment in the Regular Navy in which event discharge will be effected in accordance with applicable instructions. See also article C-1407 of the Bureau of Naval Personnel Manual and implementing directives regarding extensions of enlistment. Such discharge and reenlistment or extension of enlistment do not relieve the individual of his service obligation. Time served in the reenlistment or extension of enlistment will be counted toward fulfillment of the service obligation. Members of the Naval Reserve having an additional service obligation remaining upon completion of enlistment or extension of enlistment shall, if eligible therefor, be retained in the Naval Reserve to complete the service obligation.

(c) Conditions allowing early separation within 3 months of normal expiration of term of service are set forth in article C-10317 of the Bureau of Naval Personnel Manual.

(d) The normal date of expiration of a two, three, four, or six-year enlistment is respectively, the day preceding the second, third, fourth, or sixth anniversary of the date of enlistment, as adjusted for the purpose of making up any time lost from the enlistment. (10 U.S.C. 972; see § 730.4a.) The normal date of expiration of a minority enlistment is the day preceding the individual's twenty first birthday as adjusted for the purpose of making up any time lost from the enlistment.

(e) Retention beyond normal expiration of enlistment or term of service: Under certain conditions personnel may legally be retained beyond date of expiration of enlistment or other period of obligated service, either voluntarily or involuntarily, until discharge, release to inactive duty, or transfer to the Naval Reserve and release to inactive duty is accomplished. Whenever a person is retained in service beyond expiration of enlistment, or other period of obligated service, entry as to the reason and authority for the retention shall be made on appropriate page of the person's service record and signed in accordance with article B-2305 of the Bureau of Naval Personnel Manual. Enlisted personnel may be held beyond expiration of their enlistment or other period of obligated services for any of the following reasons as applicable:

(1) *Voluntary extension of enlistment.* Enlisted personnel may execute a voluntary agreement to extend enlistment in accordance with the provisions of article C-1407 of the Bureau of Naval Personnel Manual and implementing instructions.

(2) *Ship outside continental limits.* The normal date of expiration of enlistment or extension of enlistment of a person serving aboard a ship in foreign waters may be extended until return of the ship to a continental port of the United States, or until transfer of the person concerned to the separation activity nearest the port of debarkation. Retention for return to the United States may be effected upon voluntary request of the individual concerned or it may be effected by the senior officer present afloat if, in his opinion, the retention is essential to the public interests. Persons so retained shall be separated not later than 30 days after arrival in the United States. In order to be entitled to the increase of 25 percent in basic pay for the period of retention (10 U.S.C. 5540), the member must have been retained after the expiration of enlistment or extension of enlistment because his services were considered essential to the public interests as differentiated from desirability of the continuance of his services or some measure of benefit to be derived therefrom. (Specifically excluded from this provision are enlisted persons who are retained beyond the terms of their enlistments at shore stations, on ships on duty in waters in or around possessions and territories of the United

States, or on ships on duty in ports or waters within the sovereign jurisdiction of the United States. Also excluded are members of the Naval Reserve who are retained on active duty beyond the expiration of their periods of obligated active service as distinguished from the normal date of expiration of enlistment.) Entry should be made on the administrative remarks page of the individual's service record as to whether or not the retention was essential to the public interests and the location of the ship at the time of the expiration of his term of enlistment. When a member has been retained after the expiration of his term of enlistment because his services were essential to the public interests, payment will be substantiated by a Commanding Officer's Military Pay Order (DD Form 114) in accordance with instructions contained in paragraph 044232.3, Navy Comptroller Manual.

(3) *Records and accounts of an individual not received by activity to which transferred for separation.* Such persons may be retained in service, with their consent, pending receipt of their records and accounts. Commanding officers shall take immediate steps to obtain records and accounts by communicating with the ship or station from and via which the individual was transferred for separation; duplicate service record may be requested from the Chief of Naval Personnel in order to expedite separation. In any case in which a person whose period of obligated service has expired requests immediate separation without awaiting receipt of records and accounts, the Chief of Naval Personnel should be informed promptly with request for information outlined in article C-10408 of the Bureau of Naval Personnel Manual; in all cases of this nature the individual's written request should be obtained and filed in the service record.

(4) *Serving in temporary officer appointment.* Enlistments are extended automatically in the case of personnel whose normal date of expiration of enlistment occurs while they are serving in a temporary officer appointment.

(5) *Undergoing medical treatment or hospitalization.* (i) Enlisted personnel of the Regular Navy or Naval Reserve on active duty whose enlistments or enlistments as extended expire while they are suffering disease or injury incident to the service and who are in need of medical care or hospitalization may be retained in service beyond the normal date of expiration of their enlistments or enlistments as extended, with their consent which should be indicated in writing and signed by the individual concerned on the administrative remarks page of the service record. They may be retained until they shall have recovered to the extent which would enable them to meet the physical requirements for discharge and reenlistment, or until it shall have been ascertained that the disease or injury is of a character that recovery to such an extent would be impossible. Tacit consent may be assumed for retention in service beyond expiration of enlistment in cases of mental incompetency or physical incapacity. A person in this category ordinarily will not be retained in excess of 6 months beyond expiration of enlistment. Further retention may be authorized, however, in meritorious cases upon proper recommendation accompanied by the supporting facts. (10 U.S.C. 5537.)

(ii) In the event the member persists in his desire to be separated, effect his separation provided he signs the following entry on page 13 of his service record and on Standard Form 88, witnessed by an officer, at time examined for separation:

I, ———————— (Name), desire to be separated from the Naval Service on my normal expiration of active obligated service date. I understand that I will not be eligible for further follow-up studies or treatment at a U.S. Armed Forces medical facility; that I will be ineligible for disability benefits under laws administered by the Navy and that any further treatment and/or benefits would be under the jurisdiction of the Veterans Administration.

Personnel being processed before a physical evaluation board will not normally be released from active duty or discharged until final action on their case has been completed by the Secretary of the Navy and instructions received from the Chief of Naval Personnel. An untimely separation of a member who is the subject of a physi-

cal evaluation board proceeding may prejudice his case in view of the fact that the law requires that the Secretary make the necessary physical disability determinations while the member is entitled to receive basic pay, except in cases of Reservists on training duty of 30 days or less. This should be explained to any member whose enlistment or term of active service is about to expire and who requests discharge or release from active duty prior to the time such determinations are made. Any request for separation which is not withdrawn following such explanation shall be entered on page 13 of the Service Record as follows:

I, _____ (Name), desire to be separated from the Naval Service notwithstanding the fact that such separation may prejudice any rights or benefits to which I may be entitled as a result of the physical evaluation board hearings under Title 10, U.S. Code, Chapter 61. I have been fully advised of my rights in this matter and request that I be discharged from the Naval Service as soon as possible without further hearing and without disability retirement pay or severance pay and without any compensation whatsoever. I understand that I am not required, and am under no obligation, to give this certificate and I hereby certify that I give the certificate voluntarily.

The foregoing statement shall be signed by the individual and witnessed by an officer.

(6) *Disability incurred not in line of duty.* (i) Not due to own misconduct: The enlistment of a person undergoing hospitalization for injury, sickness or disease incurred not in line of duty, not due to own misconduct, will not be extended under the provisions of paragraph (e)(5) of this section. Unless the term of service is extended by some other provisions of this section, an individual in this status should be brought before a medical board at a time which will permit action to be taken on recommendation for disposition prior to expiration of term of service. If proceedings in accordance with law and regulations result in a determination that the individual is not physically fit for service or reenlistment and is to be discharged, discharge normally will be effected because of disability rather than expiration of enlistment or fulfillment of service obligation.

(ii) Due to own misconduct: The term of service of a person undergoing hospitalization for injury, sickness or disease the result of own misconduct is extended automatically by such lost time. See paragraph (e)(11) of this section. Personnel in this status should be brought before a medical board at a time which will permit action to be taken prior to the date the term of service normally would expire if the person were not in a misconduct status. If it is determined in accordance with law and regulations that the individual is not physically fit for service or reenlistment, and recommendation for discharge is approved by proper authority, the individual will be awarded the type and character of discharge considered proper based on his medical and military records.

(iii) The records and accounts of personnel in either of the foregoing categories will not be closed until discharge is effected. The individual's service record shall bear appropriate entry regarding his status.

(7) *Detention in service during war or national emergency.* Enlistments and periods of obligated service of enlisted personnel in the naval service are extended, or may be extended by the Secretary of the Navy, in time of war or national emergency in accordance with the provisions of Title 10, United States Code, sections 511 and 5538.

(8) *Awaiting or undergoing trial and punishment by court-martial.* Jurisdiction having attached by commencement of timely action with a view to trial, as by apprehension, investigation, arrest, confinement, or filing of charges, continues for all purposes of trial, sentence, and punishment. If such action is initiated with a view to trial because of an offense committed by an individual prior to his official discharge or separation, even though the term of enlistment or obligated service may have expired, he may be retained in the service for trial and punishment after his period of service would otherwise have expired.

(9) *Awaiting completion of appellate review of court-martial sentence which includes punitive discharge.* Except as

otherwise provided in this subparagraph, an enlisted member sentenced to punitive discharge must be retained in the service to await completion of appellate review of his court-martial case even though the period of confinement, if any, adjudged under the sentence has been served, and his enlistment or other period of obligated active service has expired. Unless the member is confined, the service record entry prepared to reflect such retention beyond expiration of enlistment or other obligated active service should state the nature of duties performed by the member and the average number of hours daily his services are utilized while he is so retained. Nothing stated in this subparagraph is to be construed as precluding the members' administrative separation when directed by the Chief of Naval Personnel, or the granting of leave to the member in accordance with current instructions (see SecNav Instruction 1050.3 (§ 719.206 of this chapter) or revision thereof) to await completion of appellate review of his case.

(10) *Retention as party to a court of inquiry.* When an enlisted member has been named a party to a court of inquiry, and the proceedings have been entered upon prior to the expiration of enlistment or term of obligated service, the individual may be retained in the service as a party to the said court of inquiry, and for resultant trial if such is indicated.

(11) *Voluntarily making up lost time.* Enlisted personnel who before 24 July 1956 lost time in excess of 24 consecutive hours from their enlistments or enlistments as extended due to unauthorized absence, confinement, or nonperformance of duty (civil arrest) as defined in paragraph 044019-1 of the Navy Comptroller Manual (§ 719.203 of this chapter) may be permitted to make up such lost time in order to complete the term for which they enlisted or extended their enlistments. In order to be valid, application to make up lost time must be submitted by the individual and approved by or on behalf of the commanding officer prior to expiration of the enlistment or extension of enlistment during which the time was lost. Appropriate entry shall be made on the administrative remarks page of the service record which shall reflect the date on which the application was approved.

(12) *Mandatorily making up lost time.* Instructions concerning mandatorily making up lost time due to sickness misconduct occurring before, on, or after July 24, 1956, and unauthorized absence, confinement, and nonperformance of duty (civil arrest) occurring on or after July 24, 1956, are contained in § 730.4a.

(f) Indebtedness: An individual who is otherwise eligible for separation will not be retained beyond his normal expiration of obligated service date to satisfy an indebtedness to the Government (or to an individual), or for the purpose of obtaining remission of indebtedness.

[24 FR 7442, Sept. 16, 1959, as amended at 29 FR 3141, Mar. 7, 1964; 29 FR 18280, Dec. 24, 1964]

§ 730.4a Time lost which must be made up.

(a) *Persons required to make up lost time.* Pursuant to Title 10, United States Code, section 972, enlisted members of the Regular Navy and Naval Reserve who are otherwise eligible to be separated from active duty upon:

(1) Expiration of enlistment, including a minority enlistment or an enlistment as extended;

(2) Completion of the period for which inducted;

(3) Completion of an additional service obligation (Bureau of Naval Personnel Manual, article C-1402(3));

(4) Completion of extended active duty or active duty for training in excess of thirty days;

who have lost time from their current enlistment or other current period of obligated service due to unauthorized absence, confinement, nonperformance of duty (civil arrest), or sickness misconduct as defined in paragraph (b) of this section, shall be required to make up such lost time day-for-day before being separated. As used herein, the term "separated from active duty" includes discharges and releases to inactive duty. Members who are in confinement at the time

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their enlistment or other period of obligated service would otherwise expire shall be required, upon their release from confinement, to make up the time they lost unless appellate review and any applicable clemency action by the Secretary of the Navy (see SecNav Instruction 5815.3 (§ 719.205 of this chapter) or revision thereof) have been completed and a punitive discharge is to be executed. Members awaiting execution of a punitive discharge who are not in confinement when their enlistment or other obligated service expires shall also be required to make good lost time pending completion of appellate review and clemency action unless they are granted leave in accordance with current instructions (See SecNav Instruction 1050.3 (§ 719.206 of this chapter or revision thereof) to await completion of appellate review. The requirement to make up lost time does not apply to Fleet Reservists, retired personnel, or to members who are to be separated for reasons other than those set forth in paragraphs (a) (1), (2), (3), and (4) of this section.

(b) *Definitions.* In computing lost time which must be made good, the following definitions apply:

(1) Unauthorized absence is a period of absence in excess of 24 consecutive hours without leave or liberty, over leave or liberty, or in desertion occurring on or after July 24, 1956, unless excused by competent authority as unavoidable. Such periods of unauthorized absence which are clearly reflected in the service record or other official Navy records kept for administrative purposes must be made up regardless of whether the member is tried and convicted of being absent for any or all of the periods involved. When these records do not clearly reflect the duration of the unauthorized absence, the findings of the court-martial in the premises shall be considered in determining the period of absence which must be made up: Article C-7802(4) of the Bureau of Naval Personnel Manual sets forth instructions concerning termination of periods of unauthorized absence. Periods of unauthorized absence over annual, reenlistment, or emergency leave, including leave granted in connection with transfer orders, which are excused as unavoidable, shall be charged day-for-day against leave, and leave rations shall be paid in accordance with article A-4404(7), Bureau of Naval Personnel Manual.

(i) In the case of a member who while on unauthorized absence is apprehended by civil authority but not convicted, the entire period of absence from duty shall be counted as unauthorized absence.

(ii) If a member while on leave or liberty is taken into custody and held by the civil authority beyond expiration of leave or liberty and is later released without trial the absence from duty will be considered as unavoidable and not as time lost, unless the member was released upon his agreement to make reparation for the offense for which he was arrested or unless he was subsequently convicted by a court-martial on the same facts and/or of unauthorized absence for the period involved. However, a member released without trial upon his agreement to make reparation shall not be considered as having lost time if his absence is excused as unavoidable in accordance with the provision of paragraph 044253-1, Navy Comptroller Manual.

(2) Confinement is a period in excess of 24 consecutive hours spent in confinement on or after July 24, 1956, either under sentence adjudged by any court-martial or while awaiting and during trial by any court-martial which results in conviction. Since time spent in confinement before July 24, 1956 is not within the scope of this definition, members placed in confinement before such date will be required to make up only the time spent in confinement on or after July 24, 1956. No period of confinement while awaiting trial shall be counted as lost time if the individual is acquitted of the charges involved or if no finding of guilty is upheld upon completion of appellate review. Time spent in confinement under sentence is counted as lost time only to the extent the sentence to confinement is upheld upon completion of appellate review and clemency action if any. Thus, if a member served nine months in confinement under a sentence which upon

appellate review is reduced to six months, he has lost only six months of time from his enlistment. Articles B-2316A and C-7819, Bureau of Naval Personnel Manual, relate to the action to be taken in case the individual is acquitted or the sentence is set aside, mitigated, or remitted. Confinement awaiting and during trial or under sentence will be regarded as absence from duty pending final action in each case in accordance with the provisions of the Manual for Courts-Martial.

(i) As used herein, the term "confinement" means physical restraint imposed by oral or written orders of competent authority or as adjudged by sentence of court-martial, which restraint deprives the member of his freedom for the period involved. It does not include moral restraint which limits the members' personal liberty as in the case of arrest or restriction, or periods of confinement awaiting or imposed as nonjudicial punishment.

(ii) Periods during which a sentence to confinement is interrupted or suspended for any of the causes set forth in paragraph 97c (Manual for Courts-Martial Executive Order 10214; 3 CFR, 1949–1953 Comp., p. 501), shall not be considered as periods of confinement but, where appropriate, shall be considered as periods of unauthorized absence or nonperformance of duty (civil arrest).

(iii) Periods during which a member is on base parole are counted as time lost due to confinement. Base parole is a status in which deserving personnel are permitted to perform normal duties outside the brig under regular supervision within the limits of the command without the presence of guards, and to return unescorted to the brig at the end of working hours.

(3) Nonperformance of duty (civil arrest) is a period in excess of 24 consecutive hours of nonperformance of duty while confined under sentence or while confined awaiting and during trial by civil authority on or after July 24, 1956 if the member is convicted under the laws of the state or government concerned. For the purpose of this paragraph, no distinction is to be made between cases wherein the member is apprehended by the civil authorities and those wherein he is delivered to them from naval custody. Pending final action by the civil authorities, any time in excess of 24 consecutive hours a member is held by such authorities with a view to possible trial is considered as time lost.

(i) If the member is acquitted or his conviction is later set aside, except as provided in the following sentence, the absence from duty is not nonperformance of duty (civil arrest), and appropriate entry shall be made in the service record. A court order vacating the conviction because the member satisfactorily completed his probation does not have the effect of excusing the lost time involved. However, if as a result of appellate review, a sentence to confinement is reduced after it has been served, only that part of the sentence to confinement which remains after the sentence has become final is counted as nonperformance of duty (civil arrest).

(ii) If a member is taken into custody by the civil authorities while he is on authorized leave or liberty, the period during which he is held by the civil authorities while in a leave or liberty status shall not be counted as time lost. However, if the member's remaining leave or liberty is cancelled while he is held by the civil authorities, the balance of the time he is so held will be counted as lost time if he is convicted. A period of unauthorized absence is not interrupted by civil arrest if the unauthorized absence is the cause of the apprehension by civil authority.

(4) Sickness misconduct is a period in excess of 24 consecutive hours of absence from regular duty occurring before, on, or after July 24, 1956 which is determined to be due to intemperate use of drugs or alcoholic liquor, or to disease or injury resulting from the member's own misconduct. The making of sickness misconduct determinations is governed by applicable provisions of Chapters II–VI and VIII, JAG Instruction P5800.7, Manual of the Judge Advocate General. Upon approval by the convening authority of an opinion rendered by a fact-finding body appointed in accordance with such provisions that the absence from duty was due to intemperate use of drugs or alcoholic liquor or disease or

injury resulting from the member's own misconduct, the absence shall be considered as time lost pending final action by the Judge Advocate General. Paragraph 044252, Navy Comptroller Manual, provides for forfeiture of pay when absence from regular duty is due to the effects of a disease from intemperate use of alcoholic liquors or habit forming drugs.

(c) *Computing lost time.* Lost time which must be made up is computed on a day-for-day basis including the 31st day of a month. In accounting for periods of absence from duty as defined in paragraph (b) of this section the first day of the absence is counted as a day of absence from duty and the day of return to duty is counted as a day of duty. When one type of lost time ends on the same day that a second type of lost time begins, such day shall be counted as the first day of the second type of lost time. Thus, if a member while on unauthorized absence is apprehended and convicted by civil authority and is then returned to military control on the day he is released by civil authority, the day on which he is apprehended by civil authority is counted as a day of nonperformance of duty (civil arrest). However, if the absentee does not return to military control on the day he is released by civil authority, the entire period of absence from duty shall be counted as unauthorized absence without interruption by the civil arrest. A member whose absence from duty continues beyond expiration of enlistment or other period of obligated service is required to make up only the time actually lost from the enlistment or other period of obligated service. The proper method of computing lost time which must be made good is illustrated by the examples set forth at the end of this paragraph. This method is also to be used to determine time lost by enlisted personnel for the purpose of computing cumulative service for retirement and for transfer to the Fleet Reserve, and by officers and enlisted personnel for the purpose of determining entitlement to leave. Paragraphs 044019 and 044250, Navy Comptroller Manual, deal with the method to be used in computing service for pay purposes.

(1) Unauthorized absence commenced 0800, March 9, 1961 and ended 0800, March 10, 1961 (24 hours). No deductible time, as unauthorized absence was not in excess of 24 hours.

(2) Unauthorized absence commenced 0800, February 28, 1961 (not leap year) and ended 0830, March 1, 1961 (24 hours and 30 minutes).

UA—1 day (February 28)

(3) Unauthorized absence commenced 2345, June 1, 1961 and ended 0015, June 3, 1961 (24 hours and 30 minutes).

UA—2 days (June 1, 2)

(4) Sentenced by SCM (summary court-martial) on May 1, 1961 to 3 days' confinement. Placed in confinement at 1400 that day and released 0900, May 3, 1961 after having served 3 days' confinement as computed under Article 302 and Chapter 10 of the Corrections Manual.

CONF—2 days (May 1, 2)

(5) Admitted for treatment for disease due to own misconduct on February 2, 1961. Discharged from treatment on March 19, 1961.

SKMC—(sickness misconduct)—27 days in February, 18 days in March; total 45 days

(6) Admitted for treatment for injury due to own misconduct on June 29, 1961. Diagnosis for further treatment changed to sickness not due to own misconduct on August 16, 1961.

SKMC—2 days in June, 31 in July, 15 days in August; total 48 days

(7) Unauthorized absence commenced 0800, April 10, 1961. Apprehended by FBI agents at 0900, July 13, 1961 and delivered for safekeeping to, and confined at, Air Force Base at 1100, July 15, 1961. Delivered under guard to duty station at 1600, July 25, 1961 and immediately placed in confinement awaiting trial. Tried by general court-martial on July 31, 1961 and sentenced to 6 months' confinement. Released from confinement and restored to duty December 24, 1961.

UA—21 days in April, 31 days in May, 30 days in June, 14 days in July; total 96 days

CONF—17 days in July, 31 days in August, 30 days in September, 31 days in October, 30 days in November, 23 days in December; total 162 days

(8) Delivered to civil authorities at 1600, February 27, 1961 for trial by civil court. Convicted; released to naval control at 0930, March 6, 1961 after paying a fine.

NPDI [Nonperformance of duty] (Civil)—2 days in February, 5 days in March; total 7 days

(9) Unauthorized absence commenced 0800, March 16, 1961. Apprehended by civil authorities on March 20, 1961, confined, tried, and acquitted by civil authorities on March 23, 1961. Returned to naval control on March 23, 1961.

UA—7 days (16—22 March)

(d) *Recording lost time and extending enlistments and service obligations.* (1) Entry shall be made on pages 8 and 13 of the service record to reflect each period of absence from duty as defined in paragraph (b) of this section. In the cases of members required to make up lost time, entry will also be made on page 13 to show the extension of the enlistment, period of induction, and period of obligated active service, as appropriate, by the number of days which must be made up. For this purpose, the enlistment or other period of service shall be extended from the normal date of expiration thereof or from the date of restoration to full duty, whichever is later.

(2) Reservists required to make up time lost from their obligated active service shall make up such time prior to release from extended active duty or active duty for training in excess of 30 days.

[29 FR 3141, Mar. 7, 1964]

§ 730.5 Separation of enlisted personnel by reason of physical disability.

(a) When separation from the naval service is indicated by reason of physical disability, the individual concerned shall be reported upon by a board of medical survey or medical board. Members whose disabilities are considered to be incurred in active service normally will be processed by medical boards and physical evaluation boards; members with disabilities not incurred in service or aggravated by service normally shall be processed by boards of medical survey. Release or discharge by reason of physical disability will not be effected without prior approval of the Chief of Naval Personnel except where specific authorization has been delegated to certain commands.

(b) In general, an enlisted person will be separated from active service by reason of physical disability upon a determination that the individual concerned is physically unfit to perform the duties of his rate. Unfitness by reason of physical disability is defined as the member concerned being unable to perform the duties of his rate in such a manner as to reasonably fulfill the purpose of his employment on the active list.

(c) The medical board report or report of medical survey, together with all pertinent facts, shall be forwarded by the convening authority of the board to the Chief of Naval Personnel via the Chief of the Bureau of Medicine and Surgery when there is an indication of disciplinary action pending including court-martial proceedings or investigative proceedings which might lead to court-martial, or uncompleted sentences of courts-martial involving confinement or discharge, drug addiction, alcoholism, homosexuality, or criminalism; or there is evidence that the member is under investigation or being processed as a security risk. In such cases, no further action toward final disposition of the case shall be taken until receipt of instructions from the Chief of Naval Personnel. If, subsequent to appearance before a physical evaluation board or board of medical survey a member becomes subject to disciplinary action, a report by message with copy to the naval hospital which began the processing shall be submitted to the Chief of Naval Personnel stating action taken or contemplated.

(d) In the case of an individual whose enlistment has been extended at his own written request under the provisions of § 730.4(e)(5) the report should clearly indicate:

(1) Patient's status (held beyond normal expiration date of enlistment);

(2) Date of admission to sick list;

(3) Whether the individual is, or is not, fit for reenlistment. Should the board find an individual not fit for reenlistment, an opinion should be expressed as to whether or not satisfactory recovery is possible. A person in this category ordinarily will not be retained in excess of 6 months beyond the date on which the enlistment

would have expired. Such further retention may be recommended in cases deemed to merit consideration by setting forth fully the facts on which the recommendation is based.

(e) Disposition of those individuals retained beyond the normal date of expiration of their enlistment under the provisions of § 730.4(e)(5) will be effected in accordance with the following:

(1) In cases where recovery is made to the extent that the individual becomes fit for return to full duty status, effect separation in accordance with § 730.4(a).

(2) If processing of a case by a physical evaluation board has been authorized, retain the individual in service until final disposition is directed by the Chief of Naval Personnel, unless the individual concerned states in writing that he does not desire to be retained until final action has been taken on the recommended findings and proceedings of a physical evaluation board. (See § 730.4(e)(5).)

(3) Those cases where maximum benefits of hospitalization result only in fitting the individual for return to limited duty will be reported upon by an appropriate medical board. Retain in service until final disposition is directed by the Chief of Naval Personnel.

Should the status of an individual not be resolved into one of the above categories by the end of 6 months beyond the normal expiration of term of enlistment, report by an appropriate medical board will be made to the Chief of Naval Personnel, via the Chief of the Bureau of Medicine and Surgery.

(f) Character of discharge: Character of discharge is governed by §§ 730.1 and 730.2. Enlisted personnel who, upon reporting for active duty, are found not physically qualified by reason of a disability which is reported on the Report of Medical Examination, Standard Form 88, provided the disability is considered not due to own misconduct, shall be issued an Honorable Discharge, DD Form 256N, by reason of disability. Such discharges are effected only when directed by the Chief of Naval Personnel in individual cases, or under special instructions issued by the Chief of Naval Personnel.

(g) Additional service obligation: In effecting discharges in accordance with this section, such discharges shall not only serve to terminate current enlistment contracts but also any additional service obligations which may have been incurred pursuant to section 4(d) of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 454(d), 10 U.S.C. 651). (Article C-1402 of the Bureau of Naval Personnel Manual contains information and instructions concerning additional service obligations.) Appropriate entries to this effect shall be made in service records of those individuals discharged under the provisions of this section.

[24 FR 7444, Sept. 16, 1959, as amended at 28 FR 591, Jan. 23, 1963; 29 FR 18280, Dec. 24, 1964]

§ 730.6 Separation of enlisted personnel for convenience of the Government.

(a) The Chief of Naval Personnel may authorize or direct the separation of enlisted or inducted personnel prior to the expiration of their active obligated service dates for any one of the reasons listed in this section. The term "separation" as used in this section includes discharge or transfer to the Naval Reserve and concurrent release to inactive duty, or release to inactive duty in certain cases of Naval Reservists serving on active duty who have time remaining in service obligation or enlistment contract.

(1) General demobilization, reduction in authorized strength, or by an order applicable to all members of a class of personnel specified in the order.

(2) Acceptance of a commission or permanent appointment as officer in any branch of the Armed Forces, for active duty only (includes appointment as warrant officer in U.S. Army Reserve (Active)). Members who initiate application for selection as an officer in any other branch of the Armed Services should be advised to submit, by separate action, request for conditional release to accept such appointment. Requests are to be submitted to the Chief of Naval Personnel via mem-

ber's commanding officer with a copy to the appropriate Enlisted Personnel Distribution Office.

(3) To permit immediate reenlistment at the request of the individual prior to normal expiration of enlistment in accordance with article C-1403 of the Bureau of Naval Personnel Manual or other instructions issued from time to time by the Chief of Naval Personnel.

(4) National health, safety or interest.

(5) Erroneous enlistment, reenlistment, extension or induction.

(6) Conscientious objection (article C-5210, Bureau of Naval Personnel Manual).

(7) Disqualified—obesity (article C-7703, Bureau of Naval Personnel Manual).

(8) To accept a public office.

(9) To provide for early separation of personnel under various authorized programs and circumstances.

(10) Repeated below-average or unsatisfactory markings or unfavorable or less than favorable remarks on noncommissioned or petty officer fitness or enlisted performance evaluation reports.[1]

(11) Substandard personal behavior which reflects discredit upon the service or adversely affects the member's performance of duty.[1]

(12) Upon an individual member's written request submitted in accordance with § 730.8, where there is a demonstrated dependency or hardship, even though such dependency or hardship does not meet the criteria specified in that section.[1]

(13) Upon the recommendation of the Chief, Bureau of Medicine and Surgery, that a member of the naval service be separated for administrative reasons when such member is suffering from a condition not considered a physical disability and such condition has interfered with his performance of duty.

(14) When, as determined by a medical officer or his commanding officer, a member is allergic to clothing material or cannot be fitted with appropriate uniform clothing or provided with appropriate bedding.

(15) As a result of action taken with respect to the decisions or recommendations of the Naval Clemency Board, a Navy Review Board, or a Navy Enlisted Performance Board or other similar board.

(16) When, as determined by a medical officer, the member suffers from motion/travel sickness (989—as listed in Department of Defense Disease and Injury Codes, TB MED 15, NAVMED P-5082, AFM 160-24).

(17) Upon determination by a medical officer that a member of the naval service, as a member of any of the various Navy officer candidate officer training, or officer procurement programs, is not physically qualified for appointment as an officer in the naval service, although the member's physical disqualification does not fall within the purview of § 730.5, and although the member is physically qualified to serve as an enlisted member of the naval service.

(18) Where a member is properly inducted, enlisted or reenlisted, but is erroneously given a higher grade than that to which he is entitled under applicable Navy directives.

(19) Where a member is properly inducted, enlisted or reenlisted, but has more than the maximum number of dependents authorized by applicable Navy directives.

(20) Where a member is properly inducted, enlisted or reenlisted, but, because of subsequent increased height, cannot be assigned duties appropriate to his rating.

(21) Where a member is erroneously delivered a punitive discharge before review of the adjudged punitive discharge is final, and as a result of final review, the punitive discharge is set aside, suspended or remitted.

(22) At the individual member's written request, on the ground of being an alien.

(23) Where a member cannot be assigned appropriate duties because of security reasons.

(24) When a member is found to be serving in a constructive enlistment.

(25) As a result of the issuance of a writ of habeas corpus wherein it has

[1] Requests/recommendations for separation under subpar. (10), (11), or (12) are not desired. The Chief of Naval Personnel will initiate such action when appropriate.

been determined that the member's retention in the naval service is illegal.

(26) When a member is disenrolled from the Naval Academy and is not considered qualified for enlisted status.

(b) Subject to the following instructions, the commanding officer shall, as appropriate, discharge or transfer for discharge for the convenience of the Government, an enlisted woman for any one of the following reasons: (The instructions contained in this paragraph should not be interpreted as precluding the commanding officer from forwarding any case to the Chief of Naval Personnel for decision should he consider such action appropriate. In the case of either parenthood or pregnancy of a married enlisted woman who has over 18 years of service but insufficient time for retirement the commanding officer will forward the case to the Chief of Naval Personnel for a decision.)

(1) Parenthood, when it is established that a woman is the parent, by birth or adoption, of a child under 18; has personal custody of a child under 18; is the stepparent of a child under 18 and the child resides within the household of the woman for a period of more than 30 days a year; or during her current enlistment or extension of enlistment, has given birth to a living child. In any case wherein a woman is the natural parent of a child born prior to her entry into the naval service and wherein all rights to custody and control of the child are asserted to have been lost through formal adoption proceedings prior to the woman's entry into the service, the commanding officer shall not effect discharge of the woman concerned without specific authorization of the Chief of Naval Personnel.

(2) Pregnancy, regardless of marital status, upon determination by a naval medical officer. The type of discharge shall be as warranted by her service record regardless of marital status. If pregnancy is terminated prior to separation, a full report of the circumstances shall be submitted to the Chief of Naval Personnel including whether or not the termination was a result of a spontaneous or therapeutic abortion or a still birth, or if there is evidence of nontherapeutic abortion, together with servicewoman's desires as to retention in the service and the Commanding Officer's recommendation thereon.

(3) Marriage, upon written request to the commanding officer provided she is not serving at a duty station which is sufficiently close to the location of her husband to permit the establishment of a joint household and further provided member meets all the conditions set forth below which are applicable in her case. (If two or more of the conditions apply, the period of time which results in retaining her to the latest date shall govern). In any case discharge will not be effected earlier than six months from the date of submission of written request therefor except that commanding officers may waive the six months' delay in discharge in those cases wherein a contact relief is not required or at such time as a relief becomes available.

(i) Must have served not less than 12 months subsequent to completion of recruit training and not less than 12 months at current duty station, or not less than 12 months at new duty station if separation requested after issuance of transfer orders.

(ii) If member attended a service school during her enlistment:

(*a*) If length of course was 24 weeks, must have served 24 months after completion of the course or disenrollment therefrom.

(*b*) If length of course was over 24 weeks or less, must have served 18 months after completion of the course or disenrollment therefrom.

Ensure that a copy of the member's request and information as to the command's action thereon is submitted to the Bureau of Naval Personnel (Pers B2122) and the cognizant personnel distributor in all cases. (Article A-4204 of the Bureau of Naval Personnel Manual contains instructions relative to recoupment of reenlistment bonus, if paid.)

(c) *Attend college:* (1) Commanding officers are hereby authorized to separate or transfer for separation enlisted personnel for the purpose of commencing or resuming their college education provided eligibility is estab-

lished in accordance with the following:

(i) The requested date of separation must be within 3 months of the individual's normal expiration of active-obligated service and, within this limitation, not earlier than 10 days prior to the date of registration as prescribed by the educational institution. (Normal expiration of active-obligated service is the date on which the individual would normally be eligible for release to inactive duty. It is not the "advanced" separation date established by any early separation program which may be in effect.)

(ii) The applicant must demonstrate an ability and willingness to make the required payment of an entrance fee, if required, provided he has not already done so. The applicant must also demonstrate that the specific school term for which he is seeking early release is academically the most opportune time for him to begin or resume his education; and that delay of enrollment until a date subsequent to normal separation date would handicap him in the pursuit of his education.

(iii) The applicant must obtain a statement from the educational institution which establishes:

(*a*) That the applicant has been accepted for enrollment without qualification for entrance in a specified school term. (A summer term may be used to fulfill this requirement.)

(*b*) That the applicant will be enrolled in a full-time course of instruction leading to a baccalaureate or higher degree. (Enrollment in an accredited Junior College may be used to fulfill this requirement.)

(*c*) The convening date of class for the specified school term.

(*d*) The registration dates for the specified school term.

(*e*) That the educational institution is currently listed in Part III of the Educational Directory published by U.S. Department of Health, Education and Welfare.

(iv) The applicant's performance of duty must have been such that he is deserving of consideration for early separation. Additionally, requirements for honorable discharge in article C-7821(10)(b) of the Bureau of Naval Personnel Manual must be met.

(v) The loss occasioned by the early release of the applicant, without immediate replacement, will not reduce the operational readiness of the command to an unacceptable degree.

(vi) The commanding officer will assure, to his satisfaction, that early release is not being requested for the purpose of avoiding service.

(2) Exceptions: The Chief of Naval Personnel, as a policy, will not authorize the early separation of personnel who do not fully meet the requirements set forth in paragraph (c)(1) of this section. In no case will early release for educational purposes be authorized earlier than 3 months in advance of normal expiration of active-obligated service. While the Chief of Naval Personnel does not desire to prevent personnel who are not fully qualified under paragraph (c)(1) of this section above from applying for early release, such personnel should be carefully and completely informed of the Bureau's firm policy in this regard and discouraged from submitting an official request except for unusual reasons. However, if the individual concerned still wishes to submit a request for early release in accordance with article B-1105 of the Bureau of Naval Personnel Manual, the request should be forwarded to the Chief of Naval Personnel (Attn: Pers B222) with the information listed in paragraphs (c)(1) (i) to (iii) of this section. The commanding officer in his endorsement will comment on the factors listed in paragraphs (c)(1) (iv) to (vi) of this section.

(3) Personnel not eligible for early release to attend college. Personnel in the following categories are not eligible for early release under the provisions of paragraph (c)(1) of this section.

(i) Aliens seeking to qualify for citizenship by completion of 3 years' active military service, since early release might jeopardize their expeditious naturalization.

(ii) Personnel who will have a reserve obligation remaining upon separation, as determined by article C-1402 of the BUPERS Manual, will not be separated until they have completed

21 months' active duty on their current term of active-obligated service.

(iii) Personnel who are ordered to 6 months' active duty for training.

(iv) Personnel whose services are essential to the mission of the command.

(d) Commanding officers shall discharge or transfer for discharge those non-petty officers serving in their first enlistment who have served continuously on active duty for more than 12 months and are considered to be a burden to the Command due to substandard performance or inability to adapt to military service provided (1) they have a tenth grade education or less or a GCT of 41 or less, (2) are not potential petty officer material, and (3) have average performance marks below the minimum required for honorable discharge and reenlistment.

(e) Full information regarding the reason for separation and a recommendation concerning reenlistment in accordance with article C-10103 of the Bureau of Naval Personnel Manual based upon enlisted performance evaluations (article C-7821 of the Bureau of Naval Personnel Manual and applicable Bureau directives) shall be entered on page 13 of the service record in connection with all cases within the purview of this section.

[29 FR 18280, Dec. 24, 1964, as amended at 31 FR 10187, July 28, 1966]

§ 730.7 Discharge of enlisted personnel for own convenience and furlough without pay.

(a) The Bureau of Naval Personnel, as a policy, will not discharge enlisted personnel for their own convenience. In this category are requests for discharge for the purpose of:

(1) Accepting civilian employment.

(2) Returning to school, except as provided in § 730.6(c).

(3) Entering another branch of the Armed Forces in an enlisted status.

(4) Accepting employment with Government agencies in a civilian capacity.

(b) While the Bureau does not desire to prevent personnel from applying for discharges for personal reasons, such as the reasons stated in this section, such personnel should be carefully and completely informed of the Bureau's policy in this regard and discouraged from submitting an official request for discharge for any of these reasons. However, if the individual concerned still wishes to submit a request for discharge, permission should be granted to do so; in which case substantiating documents bearing on the particular case should be required of the applicant to accompany the request.

(c) Discharges by purchase will not be authorized.

(d) Furlough without pay: In time of peace, and under such regulations as the Secretary of the Navy may prescribe, furlough without pay for the period covering the unexpired portion of their enlistments may be granted enlisted personnel in lieu of discharge by purchase or by special directive. Furlough without pay is a privilege and not a right, and personnel granted such a furlough are subject to recall to duty in time of war or national emergency, to complete the unexpired portion of their enlistment. (10 U.S.C. 6296.)

(1) It is not the present policy to grant extended furloughs without pay. Should it be found expedient to grant such furloughs, the Chief of Naval Personnel may do so either without requiring refund or under the conditions listed below:

(i) Personnel serving in first enlistment:

(*a*) Seamen recruits or other enlisted personnel undergoing a period of recruit training, by reimbursing the Government for the cost of that portion of the outfit drawn and for the cost of transportation from the place of enlistment to the training station;

(*b*) Personnel other than those who enlist as seamen recruits, during the first 6 months of enlistment, by reimbursing the Government for the portion of uniform allowance drawn and the cost of transportation from the place of enlistment to the place of first duty;

(*c*) After the first year of enlistment, by reimbursing the Government for the cost of uniform furnished.

(ii) Personnel serving in second or subsequent enlistment, or extension of enlistment, who received no reenlistment allowance or uniform allowance upon reenlistment:

(a) During the first year of said reenlistment, or extension of enlistment, by reimbursing the Government for the cost of transportation from the place of enlistment to place of first duty thereafter;

(b) After first year of said reenlistment or extensions of enlistment, no refund.

(iii) Personnel serving in second or subsequent enlistment, or under extended enlistment, who received a reenlistment allowance upon reenlistment or upon extension of enlistment, and those who were credited with clothing allowance:

(a) During the first year of reenlistment or extension of enlistment, by reimbursing the Government for the total amount of the reenlistment allowance, the portion of clothing allowance issued, and the cost of transportation from place of enlistment to place of first duty.

(b) During the second year of reenlistment or extension of enlistment, by reimbursing the Government an amount equal to three-fourths of the reenlistment allowance and three-fourths of the clothing allowance issued.

(c) During the third year of reenlistment or extension of enlistment, by reimbursing the Government an amount equal to one-half the reenlistment allowance and one-half of the clothing allowance issued.

(d) After completion of the first 9 months of the fourth year of a 6-year reenlistment by reimbursing the Government an amount equal to one-fourth of the reenlistment allowance.

(2) Furloughs without pay will not be authorized for the manifest purpose of avoiding duty on a particular ship or station. It would be required that all applications be forwarded through official channels, that applicants state their reasons for desiring the furlough and, further, that they waive all claim to transportation and travel allowance to their home or place of acceptance for enlistment; also that officers through whom applications are forwarded make comments and recommendations in each case by endorsement.

[24 FR 7445, Sept. 16, 1959, as amended at 29 FR 18282, Dec. 24, 1964]

§ 730.8 Discharge or release to inactive duty for reasons of dependency and hardship.

(a) The Chief of Naval Personnel may authorize or direct the discharge or release to inactive duty of enlisted personnel for reason of dependency or hardship. Personnel who have an additional service obligation remaining under any provisions of law will normally be transferred to the U.S. Naval Reserve if otherwise eligible therefor and released to inactive duty, or, if already a member of the Naval Reserve, released to inactive duty to serve the remainder of the obligated service therein. Where the individual does not have an additional service obligation remaining, discharge may be directed. Article H-31202(1)(d) of the Bureau of Naval Personnel Manual pertains to submission of requests for hardship or dependency discharge of Naval Reservists while on inactive duty.

(b) Enlisted personnel who desire to request discharge or release to inactive duty, as appropriate, for dependency or hardship reasons shall be informed of the proper procedure to follow. It should be clearly explained to each applicant that a request shall be submitted via official channels and that submission of a request is no assurance that discharge or release to inactive duty will be authorized. Each such request received will be carefully and sympathetically considered and a final decision will be based upon its individual merits. It should be further explained to the individual, prior to submission of his request for discharge, or when a request for hardship discharge is included as an alternative in a request for Humanitarian shore duty, that such a request, once approved by the Chief of Naval Personnel is irrevocable, except in the most unusual circumstances. In instances of this nature it will be necessary for the individual to submit a request for cancellation of discharge authority to the Chief of Naval Personnel via official channels, stating how the hardship has been eliminated, and including affidavits attesting to this fact.

(c) Policies governing discharge or release to inactive duty on account of dependency or hardship—

(1) Dependency or hardship discharges, or releases to inactive duty, will not be authorized solely for financial or business reasons; for indebtedness; for personal convenience; when an individual is under charges or in confinement; or because of the member's physical or mental condition.

(2) Discharges or releases to inactive duty will not be disapproved under the provisions of this section solely because an individual's services are needed in his assigned duties, or because he is indebted to the Government or to an individual.

(3) The Chief of Naval Personnel may direct discharge or release to inactive duty when it is considered that undue and genuine hardship exists, that the hardship is not of a temporary nature, that the conditions have arisen or have been aggravated to an excessive degree since entry into the service, and the member has made every reasonable effort by means of application for basic allowance for quarters and voluntary contributions which have proven inadequate; that the discharge or release of the individual will result in the elimination of, or will materially alleviate, the condition and that there are no means of alleviation readily available other than by such discharge or release. Examples of meritorious cases are those in which the evidence shows that, either as a result of the death or disability of a member of an enlisted person's family, the separation of the person concerned is necessary for the support or care of a member or members of the family; or that the individual or the family is undergoing hardships more severe than normally encountered by dependents of families of members of the naval service. Undue hardship does not necessarily exist solely because of altered present or expected income or because the individual is separated from his family or must suffer the inconveniences normally incident to military service. Pregnancy of an enlisted man's wife is not in itself a circumstance for which separation will be authorized.

(d) A written application for discharge or release to inactive duty for dependency or hardship shall be forwarded to the Chief of Naval Personnel via the enlisted person's commanding officer. In unusual circumstances, personnel in an authorized leave status may submit requests for dependency or hardship discharge to the Chief of Naval Personnel. To facilitate and expedite the request and to ensure that it is properly prepared in accordance with existing instructions, it should be prepared by and submitted via the nearest naval activity. The anticipated date of the individual's departure from the leave address must be included in the request. All requests must be accompanied by affidavits substantiating the dependency or hardship claim. Where practicable, one affidavit should be from the dependent concerned. The request should contain the following additional information:

(1) Reason in full for request.

(2) Complete home address of dependent and applicant.

(3) Names and addresses of persons familiar with the situation.

(4) Statement as to marital status and date of marriage.

(5) Financial statement: Complete itemized budget for serviceman and/or dependent family members, including rent, food, clothing, utilities, fuel, medical expenses, and other regular expenses; list of existing debts including names of creditors, original amount of debt, amount of debt remaining to be paid, amount of monthly payments, date debt contracted and purpose; specific amounts and modes of contributions of serviceman to dependents.

(6) Names, ages, occupations, and monthly incomes of members of the individual's family, if any, and the reasons why these members cannot contribute to the necessary care or support of the individual's family. If dependency is the result of death of a member of the enlisted person's family occurring after entrance into the service, a certificate or other valid proof of death should be furnished. If dependency or hardship is the result of disability of a member of the enlisted person's family occurring after entrance into the service, a physician's certificate should be furnished showing specifically when such disability

occurred, diagnosis, duration of hospitalization and/or convalescence.

(7) Other income of dependent family members such as from pensions, insurance, Veterans Administration compensation, rental or sale of real estate, interest on bank deposits or funds invested, fees, alimony, or moneys received of any description whatsoever, whether regular or occasional, or social security benefits.

(8) Documentary evidence if the request is based solely on marital difficulties, i.e., divorce, separation, desertion of wife, or where the serviceman or persons other than the legal spouse have been awarded custody of minor children.

(e) Before forwarding the request the commanding officer shall interview the enlisted person concerned in order to elicit any further information and to insure that the required information is supplied. The forwarding endorsement shall include:

(1) A definite recommendation for approval or disapproval of the request.

(2) A statement regarding the status of any disciplinary action pending with recommended action.

(3) An itemization of all sources of income, including type family separation allowance, if any, as determined from individual's pay record.

(4) An itemization of pay record deductions, including allotments, the amount, to whom registered and effective date.

The Commanding Officer's recommendation on an individual's request for hardship discharge should be confined to the above areas. In no case should this endorsement include a recommendation for a substitute type of discharge, i.e., general, undesirable, etc. A hardship discharge is intended to be used as an instrument to alleviate personal hardships encountered by enlisted personnel when such discharge is the only solution. It is not intended to be used as a means to rid the service of undesirables, misfits or persons considered unsuitable for continuation in the naval service.

(f) Any information concerning the private affairs of persons in the naval service, or of their families, is intended "For Official Use Only," and shall not be disclosed to persons other than in connection with their official duties, nor will the source of such information be disclosed.

(g) It is not desired that a commanding officer request information and reports from the American Red Cross or other social service or welfare agency relative to an enlisted person's home conditions when an individual submits or desires to submit a request for separation for dependency. However, if a report of the Red Cross or other agency is received by the commanding officer, which may have a bearing on the case, it should be forwarded to the Chief of Naval Personnel for consideration. The Bureau will request information in individual cases from the Red Cross or other agency when such action is considered expedient.

(h) Procedures for affecting separation by reason of dependency or hardship of individuals who have a UMT&S (Universal Military Training and Service) obligation remaining:

(1) *Regular Navy Personnel, enlisted or inducted.* When transfer to the Naval Reserve and release to inactive duty are directed by the Chief of Naval Personnel the procedures contained in article C-10319 of the Bureau of Naval Personnel Manual shall be followed with the exception that such individuals shall be assigned to the Standby Reserve—Active (USNR-S1) in lieu of the Ready Reserve.

(2) *Naval Reservists serving on active duty.* When release to inactive duty is authorized, the following action will be taken:

(i) Complete appropriate parts of page 14 of the service record and make entry under the "Remarks" column to indicate date of release to inactive duty and obligated service as follows:

Released for reasons of hardship/dependency to inactive duty in the U.S. Naval Reserve to complete the service obligation acquired under Universal Military Training and Service Act, as amended. Upon completion of travel time to be placed in Standby Reserve—Active (USNR-S1). Obligated to serve in the U.S. Naval Reserve until ————, unless sooner discharged.

(ii) Issue an Armed Forces of the United States Report of Transfer or Discharge, Form 214N. Forward service and health records to the Com-

manding Officer, NRMC. A new service record will not be opened. Distribute copies of page 14 and DD Form 214N in accordance with current instructions.

(iii) Issue orders covering release to inactive duty. Distribution of copies shall be made as shown on sample form in Article C-10404, of the Bureau of Naval Personnel Manual.

(iv) Immediately upon receipt of the service record, the commandant will place an entry on page 13 showing transfer of the individual from the Ready Reserve to the Standby Reserve—Active (USNR-S1).

(i) In effecting the separation of an individual by reason of dependency or hardship, the character of separation shall be given as indicated in §§ 730.1 and 730.2.

[24 FR 7445, Sept. 16, 1959, as amended at 26 FR 9529, Oct. 10, 1961; 29 FR 18282, Dec. 24, 1964; 32 FR 10511, July 18, 1967]

§ 730.9 Discharge of enlisted personnel by reason of minority.

(a) The Chief of Naval Personnel may authorize or direct the discharge of enlisted personnel for minority. Discharge may be authorized or directed for this reason in accordance with existing law, or as an administrative act when it is considered to be in the best interest of the Government. Article C-1402 of the Bureau of Naval Personnel Manual sets forth the minimum statutory and administrative ages for enlistment in the naval service.

(b) Under existing law (10 U.S.C. 5533, 6293; 50 U.S.C. App. 456(1)) written consent of custodial parent or legal guardian must be obtained prior to the enlistment of a male person under 18 years of age, or of a female person under 21 years of age. Because of the desire of impetuous youths to enter the service, they sometimes falsify consent papers and/or record of birth in order to obtain enlistment or induction. If it comes to the attention of a commanding officer that a male person under the age of 18, or a female person under the age of 21, may have enlisted in the naval service without written consent of custodial parent or legal guardian, or that the minor's age may have been misstated, such information shall be reported to the Chief of Naval Personnel immediately. In submitting this report, the commanding officer should include the following:

(1) Documentary evidence of the minor's true age.

(2) Request for discharge from parent or guardian—if received.

(3) Voluntary statement of the minor as to the circumstances attending his or her enlistment.

(4) In case of a male minor who is 17 years of age or over or a female minor who is 18 years of age or over, the statement of the commanding officer as to whether in his opinion the minor concerned is sufficiently mature for retention. A negative opinion in this respect should, where practicable, be accompanied by a qualified psychiatric evaluation, otherwise by a medical evaluation. Similar documentation and information should be submitted in the case of an inductee who may be eligible for discharge under paragraph (c)(4) of this section.

When, on the basis of documentary evidence and other information, it appears that discharge of the minor may be authorized or directed under the provisions of paragraph (c) or (d) of this section, the minor should be retained at, or transferred to, a continental shore station and the Chief of Naval Personnel promptly informed accordingly.

(c) Discharge of enlisted men by reason of minority is governed by the following provisions:

(1) *Under statutory age.* Discharge from the Regular Navy or Naval Reserve of a male minor who is determined to be under the minimum statutory age for enlistment (14) is mandatory and application of his parent or guardian is not required. This provision is not applicable to a minor who is enlisted while under the minimum statutory age limit and remains in the service after reaching the statutory age. Such a case will be processed in accordance with paragraph (c)(2) of this section where appropriate.

(2) *Under administrative age.* The discharge of a male minor from the Regular Navy or Naval Reserve will be authorized or directed upon receipt of satisfactory evidence that he is under

the administrative age for enlistment (17). Discharge under these circumstances will be effected regardless of whether the parent or guardian consented to the enlistment or reenlistment or requested the minor's discharge, provided that the minor has not attained age 17.

(3) *Application of parent or guardian.* If a male minor has been enlisted without proper consent and has attained his 17th birthday, his discharge will be authorized or directed upon receipt of satisfactory evidence as to his true age and of an application for his discharge submitted by his custodial parent or legal guardian provided that such application has been received by the naval service within 90 days of the enlistment and that the minor has not attained age 18 at the time the application was received.

(4) *Inductee under proper age.* The discharge of an inductee who is under the age of 18 years and 6 months at the time his age is verified will be authorized or directed regardless of whether the parent or guardian has requested his discharge, unless, pursuant to Selective Service regulations, the minor, after attaining age 17, volunteered for induction with the written consent of his custodial parent or legal guardian.

(d) The discharge of an enlisted woman who is determined to be under the statutory age for enlistment (18) is mandatory, and application of her parent or guardian is not required. If a woman minor has been enlisted without proper consent and has attained her 18th birthday, her discharge will be authorized or directed upon receipt of satisfactory evidence as to her true age and of an application for her discharge submitted by her custodial parent or legal guardian provided that such application has been received by the naval service within 90 days of the enlistment and that the minor has not attained age 21 at the time the application was received.

(e) Special instructions will be issued by the Chief of Naval Personnel to certain commands, from time to time, relative to the disposition to be made in cases of minors, who, after enlistment, are discovered to have misrepresented their ages or to have enlisted without proper consent. In the absence of such special instructions any cases in the above categories shall be reported as provided in paragraph (b) of this section.

(f) The enlistment of a minor with false representation as to age, or without consent, will not in itself be considered a fraudulent enlistment.

(g) A person whose enlistment or induction is terminated by reason of minority shall not, as a result of such enlistment or induction, be considered to have acquired a service obligation under section 4(d)(3) of the Universal Military Training and Service Act as amended (50 U.S.C. App. 454(d)(3), 10 U.S.C. 651), nor is service under any enlistment or induction which was so terminated creditable toward the fulfillment of any subsequently acquired obligation.

(h) In effecting the discharge of an individual by reason of minority, the character of discharge shall be given as indicated in §§ 730.1 and 730.2.

(i) The commanding officer effecting a minority discharge shall notify the next of kin, giving the type of discharge and, in general terms, the reason for discharge. Care and discretion shall be exercised in phrasing the notification in order that the reason for discharge may not be construed by the persons concerned as derogatory to the individual or to reflect adversely on his character.

(j) When an individual is separated by reason of being under the authorized age for enlistment but is considered sufficiently mature for naval service, and is in all other respects qualified, an entry shall be made under "Remarks" on the DD Form 214 to the following effect: "Recommended for reenlistment upon reaching the authorized age for enlistment." Otherwise, this item will be left blank.

[24 FR 7446, Sept. 16, 1959, as amended at 32 FR 10511, July 18, 1967]

§ 730.10 Discharge of enlisted personnel by reason of unsuitability.

(a) Members may be separated, by reason of unsuitability, with an honorable or general discharge as warranted by their military records. A discharge by reason of unsuitability in accord-

ance with the provisions of this section, regardless of the attendant circumstances, will be effected only when directed by or authorized by the Chief of Naval Personnel.

(b) Members may be discharged by reason of unsuitability because of:

(1) Inaptitude: Applicable to those persons who are best described as inapt due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

(2) Apathy, defective attitudes, and inability to expend effort constructively: As a significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.

(3) *Alcoholism.*

(4) *Financial irresponsibility.*

(5) *Character and behavior disorders:* As determined by medical authority, character and behavior disorders and disorders of intelligence listed in Department of Defense Disease and Injury Codes (TB MED 15, NAVMED P-5082, AFM 160-24), except for combat exhaustion (3263) and other acute situational maladjustments (3264). Discharges normally should not be effected for combat exhaustion (3263) and other acute situational maladjustments (3264) per se, but they may be effected for more basic underlying disorders of which the transient state is a manifestation.

(6) *Enuresis.*

(7) *Homosexual or other aberrant tendencies.*

(c) Processing for discharge under paragraphs (b) (1), (2), (3), and (4) of this section will normally not be initiated until the individual has been given a reasonable opportunity to overcome his deficiencies. Accordingly, when it is determined that an individual may come within the purview of these specific categories, the individual shall be notified of his deficiencies and shall be counseled in regard thereto. If no improvement is forthcoming within a reasonable time, the individual should be processed in accordance with the provisions of this section.

(d) In each case processed in accordance with this section, the enlisted member shall be informed in writing of the reason(s) he is being considered for discharge and shall be afforded an opportunity to make a statement in his own behalf or decline the opportunity in writing. In the event a statement cannot be obtained, a page 13 entry of explanation shall be made in the individual's service record and a copy of the page 13 forwarded as an enclosure to the letter of transmittal.

(e) Recommendations for discharge by reason of unsuitability processed in accordance with the provisions of this section in the case of personnel with less than 8 years' continuous active duty shall be forwarded with a letter of transmittal similar to the format given in paragraph (h) of this section and shall contain the following information:

(1) Copy of letter notifying member of reason(s) for administrative processing and of the member's rights.

(2) The member's signed statement of awareness.

(3) The member's signed statement in his own behalf or his declination in writing.

(4) Psychiatric or medical evaluation for reasons outlined in paragraph (b) (2), (3), (5), (6) and (7) of this section.

(5) Copy of page 9 of the service record.

(6) Comments and recommendations of the commanding officer.

(f) A member with 8 or more years of continuous active duty processed in accordance with the provisions of this section shall be afforded an opportunity to request or waive, in writing, any or all of the following privileges. (If held by civil authorities or not on active duty, this may be accomplished by registered mail.)

(1) To have his case heard by an administrative discharge board of not less than three officers.

(2) To appear in person before such board (unless in civil confinement or otherwise unavailable).

(3) To be represented by counsel (a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice (10 U.S.C. 827(b)(1)), unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel).

(4) To submit statements in his own behalf.

(5) To waive in writing the rights listed in paragraphs (f) (1) to (4) of this section.

Prior to declaring his intentions concerning the rights listed in this paragraph, the member shall be given an opportunity to consult with counsel (a lawyer within the meaning of article 27(b)(1), UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel). If the member waives his rights, include the same information as required in paragraph (e) of this section plus a signed copy of the waiver. If the member requests an administrative discharge board, comply with the procedures as contained in § 730.15.

(g) Enlisted personnel serving at shore activities shall be retained on board pending receipt of instructions from the Chief of Naval Personnel. Enlisted personnel serving on board ships, who have been fully processed for discharge in accordance with paragraphs (b) (5), (6), or (7) of this section, may be transferred to the nearest separation activity to await instructions from the Chief of Naval Personnel. The transfer orders and records must accurately reflect the person's status and reason for transfer in order to insure that the individual is held pending receipt of the instructions from the Chief of Naval Personnel. In this connection insure that a copy of the letter of transmittal with all enclosures is inserted in the member's service record. All other personnel recommended for discharge in accordance with this section shall be retained on board pending receipt of instructions from the Chief of Naval Personnel.

(h) A letter of transmittal in the following format shall be utilized. Minor modifications will be necessary in individual cases.

From: Commanding Officer, U.S.S. EVERSAIL (DD-00).
To: Chief of Naval Personnel.
Subj: SN John Robert DOE, USN, 123 45 67; Recommendation for discharge by reason of unsuitability.
Encl: (1) Copy of letter of notification. (2) Statement of Seaman Doe. (3) Signed copy of waiver of privileges (if applicable). (4) Psychiatric evaluation. (5) Copy of page 9.

1. Pursuant to Article C-10310 of the Bureau of Naval Personnel (this section), the following information is submitted in the case of Seaman Doe:

a. *Basic record data.*

Date of current enlistment: 11-15-61 for 4 years. EAOS (Expiration of active obligated service): 11-16-65.

Marital status: Single. Dependents: 0. Months on board: 12.

Age: 22. GCT (general classification text): 45. AFQT 38. Years education: 12. Total service: 1 year 2 months (active); 0 (inactive).

b. *Diagnosis.* Emotional instability reaction.

c. *Military offenses.* 2-15-62 NJP (nonjudicial punishment) page 13-(3)—UA (unauthorized absence) 2 days—2 weeks restr. (restriction).

d. *Comments and recommendations of Commanding Officer.* It is recommended that DOE be separated from the naval service by reason of unsuitability. Further retention in the service would not be in the best interest of the U.S. Navy. (The commanding officer's comments should include information with regard to the counselling requirement for cases processed in accordance with paragraphs (b) (1), (2), (3), and (4) of this section.)

[31 FR 10187, July 28, 1966, as amended at 32 FR 10511, July 18, 1967]

§ 730.11 Discharge of enlisted personnel by reason of security.

Enlisted personnel may be separated by reason of security with an honorable, general, or undesirable discharge in accordance with departmental directives concerning the administration of the military personnel security program. (See Part 729 of this chapter.)

[24 FR 7447, Sept. 16, 1959]

§ 730.12 Discharge of enlisted personnel by reason of unfitness.

(a) Members may be separated by reason of unfitness with an undesirable discharge, or with a more creditable type discharge when it is warranted by the particular circumstances in a given case. A discharge by reason of unfitness, regardless of the attendant circumstances, will be effected only when authorized by the Chief of Naval Personnel.

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(a-1) A member being processed for a discharge for unfitness shall be given an opportunity to have his or her case heard before an administrative discharge board of at least three officers, one of whom shall be serving in the grade of lieutenant commander or higher, unless such member after consulting with counsel specifically waives his right which shall be witnessed by member's counsel. The member may elect not to appear personally before the board and have his counsel represent him at the board proceedings.

(b) Members whose military records are characterized by one or more of the following may be recommended for discharge by reason of unfitness:

(1) Frequent involvement of a discreditable nature with civil or military authorities.

(2) An established pattern for shirking.

(3) An established pattern showing dishonorable failure to pay just debts.

(4) An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(5) Homosexual acts. (SECNAV Instruction 1900.9 series sets forth controlling policy and additional action required in cases involving homosexuality.)

(6) Other sexual perversion including but not limited to (i) lewd and lascivious acts, (ii) sodomy, (iii) indecent exposure, (iv) indecent acts with or assault upon a child, or (v) other indecent acts or offenses.

(7) Drug addiction, habituation, or the unauthorized use or possession of narcotics, hypnotics, sedatives, tranquilizers, stimulants, hallucinogens, and other similar known harmful or habit forming drugs and/or chemicals.

(8) Unsanitary habits.

(c) Processing for discharge under paragraphs (b) (1), (2), (3), and (4) of this section will normally not be initiated until the individual has been given a reasonable opportunity to overcome his deficiencies. Accordingly, when it is determined that an individual may come within the purview of these specific categories, the individual shall be notified of his deficiencies and shall be counseled in regard thereto. If no improvement is forthcoming within a reasonable time, the individual should be processed in accordance with the provisions of this section.

(d) In each case processed in accordance with this section, the individual is subject to an undesirable discharge. The member must be informed in writing as to the circumstances which are the basis for the contemplated action and must be afforded an opportunity to request or waive in writing any or all of the following privileges: (If not on active duty, this may be accomplished by registered mail.)

(1) To have his case heard by a board of not less than three officers.

(2) To appear in person before such board (unless in civil confinement or otherwise unavailable).

(3) To be represented by counsel.

(4) To submit statements in his own behalf.

(5) To waive in writing the rights listed in paragraphs (d) (1) to (4) of this section.

Prior to declaring his intentions concerning the rights listed in this paragraph (and prior to requesting a discharge to escape trial by court-martial in cases processed under paragraph (b)(5) of this section) the member shall consult his counsel. If the individual requests that his case be heard by a board of officers, the commanding officer shall convene a board in accordance with § 730.15. In the event the individual refuses to request or waive his privileges, make a page 13 entry of explanation in the individual's service record and forward a copy of the page 13 along with other enclosures to the Chief of Naval Personnel.

(e) Enlisted personnel serving at shore activities shall be retained on board pending receipt of instructions from the Chief of Naval Personnel. Enlisted personnel serving on board ships who have been fully processed for discharge in accordance with paragraph (b)(5), (6), or (7) of this section may be transferred to the nearest separation activity to await instructions from the Chief of Naval Personnel. The transfer orders and records must accurately reflect the person's status

and reason for transfer in order to insure that the individual is held pending receipt of instructions from the Chief of Naval Personnel. In this connection, insure that a copy of the letter of transmittal with all enclosures is inserted in the member's service record. All other personnel recommended for discharge in accordance with this section shall be retained on board pending receipt of instructions from the Chief of Naval Personnel.

(f) A letter of transmittal shall be prepared similar to the format given in paragraph (g) of this section and shall contain the following information:

(1) Principal reason for processing: Indicate reason as given in paragraph (b) of this section, such as repeated military offenses, indebtedness, homosexual involvement, etc.

(2) Summary of military offenses: List in chronological order all disciplinary action during current enlistment. Include service-record-entry page numbers, date of nonjudicial punishment or court-martial by type, description of offense(s), nonjudicial punishment or sentence as approved and approval date, and all violations of brig or disciplinary command regulations during current confinement with action taken thereon.

(3) Unsanitary habits, if any: Substantiate all unsanitary habits including the occurrence of repeated venereal infections or other unclean habits during the current enlistment. When reporting venereal diseases, indicate the date of each admission to the sick list or dates of treatment and nature of the infection.

(4) Civil convictions, if any, on the basis of information contained in the service record or otherwise readily available: List date and court in which convicted, offense, and sentence awarded.

(5) Remarks: Include location of the individual and his records, any disciplinary action pending, identification of any other military personnel involved and action taken or contemplated in regard thereto, and other information pertinent to the case.

(6) Findings and recommendation of administrative discharge board, if held.

(7) Comment and recommendation of the commanding officer: The commanding officer's comments should include information with regard to the counseling requirement for cases processed in accordance with paragraphs (b) (1), (2), (3), and (4) of this section.

(8) Enclosures: (i) Copy of letter notifying member of reason(s) for processing and informing him of his rights and privileges.

(ii) Statement of awareness and request for or waiver of privileges. This must include the following signed statement:

I understand that I am being considered for an administrative discharge which could be under conditions other than honorable because of

(NOTE: In this space list one or more of the reasons outlined in paragraph (b) of this section) and that I am subject to and may be separated with an undesirable discharge.

I understand that an undesirable discharge is under other than honorable conditions and may deprive me of virtually all veterans' benefits based upon my current period of active service, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing.

I have been afforded an opportunity to consult with counsel (a lawyer within the meaning of Article 27(b)(1), UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel) and I understand that I am entitled to the privileges listed below.

I elect:

☐ To have my case heard by a board of not less than three officers.

☐ To appear in person before such board (unless in civil confinement or otherwise unavailable).

☐ To be represented by counsel (a lawyer within the meaning of Article 27(b)(1) UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel).

☐ To submit statements in my own behalf.

☐ None of the above privileges.

(iii) Proceedings of administrative discharge board, if held.

(iv) Statements of the member, if made.

(v) Copy of page 9 of the service record.

(vi) Other available documents such as psychiatric or medical evaluation, police reports, member's statement to investigation, etc. If being processed as result of indebtedness, include financial statement as required by article C-11104A(9) of the Bureau of Naval Personnel Manual.

(g) A letter of transmittal in the following format will be utilized. Minor modifications will be necessary in individual cases.

From: Commanding Officer, U.S.S. EVERSAIL (DD-00).
To: Chief of Naval Personnel.
Subj: SN John Robert DOE, USN, 123 45 67; Recommendation for discharge by reason of unfitness.
Encl: (1) Copy of letter of notification. (2) Signed statement of awareness and request for privileges. (3) Proceedings of Administrative Discharge Board. (4) Copy of page 9.

1. Pursuant to Article C-10311 of the Bureau of Naval Personnel Manual (this section), the following information is submitted in the case of Seaman DOE:

a. *Primary reason for processing.* Frequent involvement of a discreditable nature with civil or military authorities.

b. *Basic record data.*

Date of current enlistment: 11-15-60 for 4 years EAOS: 2-6-65.

Marital status: Single. Dependents: 0. Months on board: 12.

Age 22. GCT: 45. AFQT 38. Years of education: 12. Total service: 2 years, 2 months (active); 0 (inactive).

c. *Military offenses.*

2-15-61	NJP	Pg 13-(3)	UA 2 days—2 wks. restr.
4-11-61	NJP	Pg 13-(5)	UA 1 day—1 wk. extra duty.
8-5-61	NJP	Pg 13-(7)	Failed to obey lawful order 2 wks. extra duty.
5-1-62	SPCM	Pg 6-(1)	UA 15 days—15 days conf. approved.
10-1-62	SPCM	Pg 6-(2)	UA 20 days—1 month conf. forf. $30.00 a month for 1 month approved.
1-5-63	NJP	Pg 13-(9)	UA 5 hrs.—1 wk. rests.

d. *Other involvements.*

9-12-61—Convicted by civil authorities of drunkenness and fined $5.00.

11-20-60—Contracted VD infection.

4-7-61—Contracted VD infection.

12-5-62—Contracted VD infection.

1-7-63—Contracted VD infection.

e. *Remarks.* Seaman DOE is retained on board to await action by the Chief of Naval Personnel.

f. *Findings.* The Board finds that Seaman DOE has had frequent involvement of a discreditable nature with military authorities.

g. *Recommendation.* Discharge by reason of unfitness.

h. *Type of discharge.* Undesirable.

i. *Comments and recommendations of Commanding Officer.* Concur. It should be noted that this command has separately counselled Seaman DOE regarding his deficiencies.

[31 FR 10188, July 28, 1966, as amended at 32 FR 10511, July 18, 1967; 35 FR 11469, July 17, 1970]

§ 730.13 Discharge of enlisted personnel by reason of misconduct.

(a) Members may be separated by reason of misconduct with an undesirable discharge, or with a more creditable type discharge when it is warranted by the particular circumstances in a given case. A discharge by reason of misconduct, regardless of the attendant circumstances, will be effected only when directed by or authorized by the Chief of Naval Personnel.

(a-1) A member being processed for a discharge for misconduct shall be given an opportunity to have his or her case heard before an administrative discharge board of at least three officers, one of whom shall be serving in the grade of lieutenant commander or higher, unless such member after consulting with counsel specifically waives this right which shall be witnessed by the member's counsel. The member may elect not to appear personally before the board and have his counsel represent him at the board proceedings.

(b) Processing in accordance with this section is mandatory in any of the following cases:

(1) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to guilty of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or punished in any way as the result of an offense

involving moral turpitude: If the offense is not listed in the MCM (Manual for Courts-Martial, United States, 1951, E.O. 10214, as amended) Table of Maximum Punishments or is not closely related to an offense listed therein, the maximum punishment authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies. For the purpose of this subparagraph only, an individual will be processed even though an appeal is pending or is subsequently filed. (See § 730.1(d)(6).)

(2) Procurement of a fraudulent enlistment, induction or period of active service through any deliberate material misrepresentation, omission or concealment which if known at the time might have resulted in rejection: The enlistment of a minor with false representation as to age or without proper consent will not in itself be considered as a fraudulent enlistment.

(3) Prolonged unauthorized absence: When unauthorized continuous absence of 1 year or more has been established and the member is not under military jurisdiction. Action under this subparagraph will normally be initiated only by the Chief of Naval Personnel.

(c) In each case processed in accordance with this section, the individual is subject to an undesirable discharge. If his whereabouts is known, he must be informed in writing as to the circumstances which are the basis for the contemplated action and must be afforded an opportunity to request or waive, in writing, any or all of the following privileges: (If held by civil authorities or not on active duty, this may be accomplished by registered mail.)

(1) To have his case heard by a board of not less than three officers.

(2) To appear in person before such board (unless in civil confinement or otherwise unavailable).

(3) To be represented by counsel.

(4) To submit statements in his own behalf.

(5) To waive in writing the rights listed in paragraphs (c) (1) to (4) of this section.

Prior to declaring his intentions concerning the rights listed in this paragraph, the member shall consult with counsel. If the respondent is in civil confinement or is not reasonably available, consultation with counsel may be accomplished by mail. If the member requests that his case be heard by a board of officers, the commanding officer shall convene an administrative discharge board in accordance with § 730.15. In the event the individual refuses to request or waive his privileges, make a page 13 entry of explanation in his service record and forward a copy of the page 13, along with other enclosures, to the Chief of Naval Personnel.

(d) Personnel processed in accordance with this section normally shall be retained on board pending instructions from the Chief of Naval Personnel. However, if the particular circumstances clearly indicate that the individual should be transferred, a request for transfer, indicating the reason therefor, may be submitted to the Chief of Naval Personnel.

(e) A letter of transmittal shall be prepared similar to the format given in paragraph (f) of this section and shall contain the following information:

(1) Circumstances of offense(s): Include all facts of the offense and surrounding circumstances in sufficient detail to clarify the reasons for the arrest. Indicate whether the member was an unauthorized absentee at the time of the offense.

(2) Action by civil authorities: Include citation of civil statute(s) violated, charge(s) on which tried and convicted, court in which convicted, sentence of court, and maximum punishment which could have been imposed for such a conviction under the UCMJ, District of Columbia Code, or U.S. Code, as applicable.

(3) Previous civil convictions, if any, on the basis of information contained in the service record or otherwise readily available: List date and court in which convicted, offense, and sentence awarded.

(4) Summary of military offenses, if any: List in chronological order all disciplinary action during current enlistment. Include service-record-entry page numbers, date of nonjudicial punishment or court-martial by type, description of offense(s), nonjudicial

punishment or sentence as approved and date of approval, and all violations of brig or disciplinary command regulations during the current confinement, with action taken thereon.

(5) Remarks: Include (i) location of the individual and his records, (ii) any unauthorized absence involved, and disciplinary action taken or pending, (iii) identification of any other military personnel involved in the case and action taken or contemplated in regard thereto, and (iv) other information pertinent to the case.

(6) Findings and recommendation of administrative discharge board, if held.

(7) Comments and recommendations of the commanding officer.

(8) Enclosures: (i) Copy of letter notifying member of the reason(s) for administrative processing and informing him of his rights and privileges.

(ii) Statement of awareness and request for or waiver of privileges. This must include the following signed statement:

I understand that I am being considered for an administrative discharge which could be under conditions other than honorable because of—Note: In this space list one or more of the reasons outlined in paragraph (b) of this section—and that I am subject to and may be separated with an undesirable discharge.

I understand that an undesirable discharge is under other than honorable conditions and may deprive me of virtually all veterans' benefits based upon my current period of active service, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing.

I have been afforded an opportunity to consult with counsel (a lawyer within the meaning of article 27(b)(1), UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel) and I understand that I may request or waive the privileges listed below.

I desire to avail myself of the following:

☐ To have my case heard by a board of not less than three officers.

☐ To appear in person before such board (unless in civil confinement or otherwise unavailable).

☐ To be represented by counsel (a lawyer within the meaning of article 27(b)(1), UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel).

☐ To submit statements in my own behalf.

☐ None of the above privileges.

(iii) Proceedings of administrative discharge board, if held.

(iv) Statements of the member, if made.

(v) Copy of page 9 of the service record.

(vi) Statements of witnesses, arrest reports, copies of court records, probation orders, or any other pertinent documents.

(vii) Other pertinent exhibits.

(viii) In civil conviction cases, if the member has filed an appeal, enclose a copy of the appeal and submit comment as to the anticipated date of hearing on the appeal.

(f) A letter of transmittal in the following format shall be utilized. Minor modifications will be necessary in individual cases.

From: Commanding Officer, U.S.S. EVERSAIL (DD-00).
To: Chief of Naval Personnel.
Subj: SN John Robert DOE, USN, 123 45 67: Recommendation for discharge by reason of misconduct.
Encl: (1) Copy of letter of notification. (2) Signed statement of awareness and request for privileges. (3) Proceedings of Administrative Discharge Board. (4) Copy of page 9. (5) Information concerning arrest, conviction, or disposition (include civil document if available).

1. Pursuant to Article C-10312 of the Bureau of Naval Personnel Manual (this section), the following information is submitted in the case of Seaman DOE:

a. *Primary reason for processing.* Civil conviction.

b. *Basic record data.*

Date of current enlistment: 11-15-60 for 4 years. EAOS: Undetermined.

Marital status: Single. Dependents: 0. Months on board: 12.

Age: 22. GCT 45 AFQT 38. Years of education: 12. Total service: 2 years 2 months (active); 0 (inactive).

c. *Circumstances of offense(s) in detail.* While on authorized leave on 1-1-63, arrested by the civil authorities of Colorado Springs, Colo., on the charge of auto theft.

d. *Action of civil authorities.* Tried on 1-5-63 at Colorado Circuit Court, Colorado Springs, Colo., for violation of Title 29, Section 133.24, Colorado Penal Code, for five counts of car theft, and convicted. Received

an indeterminate term up to 5 years confinement. Presently serving sentence at the Colorado State Prison, Canon City, Colo. Maximum penalty—Article 121 UCMJ, 5 years.

e. *Summary of military offense(s).* 4-11-61 NJP (nonjudicial punishment) page 13(5) UA (unauthorized absence) 1 day—1 week extra duty.

f. *Remarks.* Records and effects located at this command. Other personnel involved: TN T. H. SMITH, USN, 645 32 21. Commanding Officer, USS NEVERSAIL, has been notified.

g. *Finding.* The board finds that Seaman DOE was convicted by the Colorado Circuit Court, Colorado Springs, Colo., of car theft, five counts.

h. *Recommendation.* Discharge by reason of misconduct.

i. *Type of discharge.* Undesirable.

j. *Comments and recommendations of Commanding Officer.* Concur.

[31 FR 10190, July 28, 1966, as amended at 32 FR 10511, July 18, 1967; 35 FR 11469, July 17, 1970]

§ 730.14 [Reserved]

§ 730.15 Administrative discharge board.

(a) *Appointment and composition.* When an administrative-discharge-board hearing is to be held, the commanding officer shall appoint a board of not less than three commissioned officers, on active duty, at least one of whom shall be serving in the grade of lieutenant commander or higher, to consider the case. The board may be composed of Regular or Reserve Navy or Marine Corps officers, or a combination thereof. If the individual under consideration (hereinafter called respondent) is a woman, the board must include a woman officer. The commanding officer shall also appoint as recorder an officer in an active duty status. The senior member of the board presides at the hearing and is responsible for its proper conduct. Prior to the hearing, the senior member shall insure that all members of the board are familiar with the provisions of pertinent sections of this part.

(1) *Reserve membership.* If the respondent is a Reservist, the membership of the board shall include a majority of Reserve officers if reasonably available. In any instance where a majority of Reserve officers is not available, the board will include not less than one Reserve officer among its members.

(2) *Counsel for the respondent.* In addition to appointed military counsel, a person selected by the respondent may also represent the respondent when the commanding officer or other proper authority determines that the person requested is reasonably available. If the respondent retains civilian counsel at his own expense, or is represented by counsel of his choice, he may excuse appointed military counsel. The hearing should not be unduly delayed to permit attendance by counsel. If undue delay appears likely, other counsel who is immediately available should be selected or appointed.

(3) *Recorder.* The recorder is responsible for the clerical and preliminary work of the hearing, but is not a member of the board. He conducts a preliminary review of available evidence and prior to the hearing interviews prospective witnesses after warning them of their rights under article 31 of the Uniform Code of Military Justice (10 U.S.C. 831), where appropriate. After consultation with the commanding officer and the senior member, he notifies the members, respondent, and counsel as to the time, date, and place of the hearing and of the witnesses expected to be present. Subject to the provisions of paragraph (b) of this section, the recorder arranges for the attendance at the hearing of the respondent, all witnesses for the Government, and military witnesses for the respondent. He verifies the information concerning the respondent and assembles pertinent directives, regulations and records for use by the board. At the hearing he presents the case against the respondent. He is responsible for preparing the record of the hearing.

(4) *Reporter.* Although a summary of testimony will normally suffice, the recorder or senior member may request a reporter for the purpose of making a verbatim record of the testimony if it appears that a substantial number of witnesses will testify, that the testimony will be lengthy, or that other good reason exists for making a verbatim record.

(b) *Obtaining witnesses.* No authority exists for the issuance of subpoenas in connection with these hearings. Appearance as witnesses of civilians, including members of the Armed Forces on inactive duty, may be arranged for on a voluntary basis. Appropriations are not available to pay witnesses' fees or reimbursement for travel or other expenses of such persons, and this fact shall be made known to them if and when they are invited to appear and testify at the hearing. Attendance at the hearing of military personnel on active duty, if reasonably available, shall be arranged for by the recorder. (See paragraph (e)(4) of this section.) Testimony of active duty military personnel not in the immediate area, if needed, should, in most cases, be obtained and presented in the form of written statements.

(c) *Investigative reports.* Copies of the respondent's statements to any investigative body including Naval Investigative Service (ONI) shall be provided to the board and to the respondent as well as statements of accusers and others. If a statement is requested which cannot be made available in its entirety, a properly excised version shall be obtained from the investigative agency and shall be made available to the respondent and the board. If considered pertinent to the issue at hand, a narrative of the results of the investigation shall also be requested and shall be made available to the respondent and the board. In no case shall the complete investigative file be made available to the board and the respondent unless authorized by the investigative source.

(d) *General procedural instructions.* (1) The board functions as an administrative rather than a judicial body. Strict rules of evidence need not be observed. Whenever applicable, article 31 of the Uniform Code of Military Justice (10 U.S.C. 831) is to be complied with. Attention is directed to the fact that (i) military personnel on active duty may not be compelled to testify or produce evidence that will incriminate them, nor may they be required to answer questions not material to the issue which might tend to degrade them and (ii) civilians, including members of the Armed Forces on inactive duty, may not be compelled to testify or produce evidence at the hearing. The board should consider any matter presented which is relevant to the issue whether written or oral, sworn or unsworn. Real evidence as distinct from testimonial evidence may be exhibited to the board and should be accurately described or reproduced for the record. The board may refuse to consider or to consider further any oral or written matter presented if it is irrelevant, immaterial, or unnecessarily repetitive and cumulative, but no such matter should be rejected or withheld from consideration on the ground that it would be incompetent for presentation to a court of law. If evidence is classified, the provisions of the Department of the Navy Security Manual for Classified Information shall be observed.

(2) The board will rely on its own judgment and experience in determining the weight and credibility to be given material received in evidence. Board proceedings under this section should not be in the nature of a formal fact-finding tribunal, or judicial trial, but should be formalized to the extent of assuring full opportunity for presentation of the respondent's case. If an objection is made at any stage during the proceedings, the senior member will ensure that the objection and basis therefor are noted in the record but should not make a formal ruling thereon. Any member of the board may be challenged, but only on grounds which show that the member cannot render a fair and impartial decision. The challenged member may be examined by the respondent, his counsel and other members of the board. The commanding officer, upon being informed of the circumstances of the challenge and the recommendation of the other members, may appoint a substitute for the challenged member if he deems such action appropriate.

(e) *Rights of the respondent.* A respondent who has not waived a hearing before an administrative discharge board and whose case is presented to such a board will be apprised of the following:

(1) He may appear in person, with or without counsel, or in his absence, be

represented by counsel, at all open proceedings of an administrative discharge board. The respondent may have counsel of his own choice provided proper authority determines that the counsel requested is reasonably available. He may employ civilian counsel at his own expense.

(2) He may challenge any voting member of the board for cause only.

(3) He may submit an oral or written statement in his own behalf.

(4) He may request, in writing, the appearance before the board of any witness whose testimony he believes to be pertinent to his case. He will specify in his request the type of information the witness can provide. The board will invite the witness to attend if it considers that the witness is reasonably available and that his testimony can add materially to the case. If a witness on active duty declines the invitation, the board may refer the matter to the convening authority for a decision or orders. However, witnesses not on active duty must appear voluntarily and at no expense to the Government. The record should reflect the reason for any requested witness' absence. If a witness on active duty is determined to be not reasonably available, the record must state the reason therefor.

(5) The respondent may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(6) He may or may not submit to examination by the board. The provisions of article 31 of the Uniform Code of Military Justice (10 U.S.C. 831) will apply. The failure of the respondent to submit to examination before the board may not be considered prejudicial.

(7) The respondent and his counsel may question any witness who appears before the board.

(8) Failure of the respondent to invoke any of these rights, after he has been apprised of same, cannot be considered as a bar to the board proceedings, findings, or recommendations.

(f) *Conduct of hearing.* (1) The senior member, upon calling the board to order, should direct the recorder to make a record as to the time, date, and place of the hearing, the identity and presence of the appointed members of the board and of the recorder, the respondent, his counsel and the latter's qualifications, and any witnesses. The senior member should then commence the hearing by explaining in substance the rights of the respondent as indicated in paragraph (e) of this section and the following:

(i) The board has been convened for the purpose of considering the pertinent facts relating to the case of (rate, name, class, and service number), who is alleged (state the specific allegations against the respondent). The board will make findings of fact and will recommend one of the following alternative dispositions: (*a*) Retention, or (*b*) discharge. If discharge is recommended, the reason must be stated along with the type of discharge.

(ii) The proceedings are administrative in nature, and the board is not bound by formal rules of evidence.

(iii) The respondent may testify in his own behalf or remain silent, and if he testifies he may be examined on his testimony and on the question of his general credibility.

(iv) Objections will be heard and noted, but there will be no formal ruling thereon.

(2) After the preliminary procedures have been completed, the recorder will present the case for the Government. The respondent will be afforded the opportunity for rebuttal and for presentation of evidence. The general procedural instructions stated in paragraph (d) of this section will be followed. Witnesses will be excluded except while testifying. Before testifying, each witness and the respondent will be asked whether or not he elects to give his testimony under oath or affirmation. After all evidence is in and questioning and oral argument, if any, are complete, the hearing will be closed. When the board meets in closed session, only voting members will be present.

(g) *Proceedings of administrative discharge board, consisting of record and report.* (1) In closed session, the board will make its findings of fact and a recommendation with respect to retention or discharge and, if discharge is recommended, indicate the reason for and type of discharge recommended. Findings and recommendation(s) shall be completed as a report, using the form in paragraph (i) of this section as a guide and shall be signed by all members. The dissent of any member will be duly recorded therein.

(2) The record of proceedings of each administrative discharge board, as a minimum, shall contain:

(i) A resume of the facts and circumstances, accompanied by supporting documents upon which the recommendation of the administrative discharge board is based, including a summary of the testimony of all witnesses heard by the board.

(ii) The identity of the counsel for the respondent and his legal qualifications.

(iii) The identity of the recorder.

(iv) A verbatim record (copy) of the board's findings and recommendation(s) as set forth in its report.

The record will be authenticated by the senior member or, if he is not immediately available, by another member.

(3) The proceedings, consisting of the report and the record, together with such attachments as exhibits and supporting documents, will be made an enclosure to the commanding officer's letter of transmittal to the Chief of Naval Personnel.

(4) Upon request, the respondent will be provided with a copy of the record of proceedings with all exhibits, except that he shall not be furnished a copy of the findings and recommendation(s) or the report, nor a copy of the letter of transmittal forwarding the case. Should the respondent make such a request, apply article 0921e of the Department of the Navy Security Manual for Classified Information (see § 719.207 of this chapter) in regard to his copy should the record or exhibits thereto contain classified information.

(h) *Review and forwarding of proceedings.* After reviewing the record of the hearing and the report of the board, the commanding officer shall note in his letter of transmittal his concurrence or nonconcurrence and enter any comment deemed appropriate. If the commanding officer determines that the respondent should be retained in the service, he may close the case except those cases falling under §§ 730.12(b)(5), (6), and (7) and 730.13. These cases must be forwarded to the Chief of Naval Personnel for final disposition.

(i) *Sample report of administrative discharge board held on board USS "Eversail" on January 13, 1966, in the case of:* Rate, SN; Name, John Robert DOE; Component, USN; Service No., 123 45 67.

Findings of the Board. The board finds that Seaman John Robert DOE participated in two homosexual acts with Henry White on July 1, 1965, and September 10, 1965, and that such acts occurred during his current enlistment.

Note: Findings of the board must relate to one of the reasons for processing as indicated in §§ 730.10, 730.12, or 730.13.

Recommendation of the Board. Discharge by reason of unfitness.

Type of discharge. Undesirable.

Signatures of board members:

_____

(John H. Fox, Lt. Comdr., USN)

_____

(Paul B. Street, Lt., USN)

_____

(Jay Appleby, Lt. USNR)

Dissent, if any (explain in detail):

Signature(s) of dissenting member(s):

_____

(Name) (Grade) (Component)

[31 FR 10191, July 28, 1966]

§ 730.15a Actions by the Chief of Naval Personnel on administrative discharge proceedings.

(a) Upon receipt of the board proceedings, the Chief of Naval Personnel may take one of the following actions:

(1) Approve the board's recommendation(s) and direct execution thereof.

(2) Approve the board's recommendation for discharge but change the type of discharge to a more creditable

one, e.g., upgrade an undesirable discharge to a general or even an honorable discharge but not direct a less favorable discharge than that recommended by the board.

(3) Approve the board's recommendation for discharge but change the basis therefor when the record indicates that such action would be appropriate, except that he shall not designate unfitness or misconduct as the basis when the board has recommended discharge for unsuitability.

(4) Disapprove the recommendation for discharge and retain the member in the service.

(5) Disapprove the recommendation for retention and direct discharge under honorable conditions with an honorable or general discharge as warranted by the respondent's military record.

(6) Set aside the findings and recommendations and refer the case to a new board if there is legal prejudice to the substantial rights of the respondent. No member of the new board shall have served on a prior board which considered the same matter. The record of the proceedings of the earlier board, minus the findings, recommendations, and prejudicial matter, may be furnished the successor board. The Chief of Naval Personnel may not approve findings or recommendations less 'avorable to the respondent than those rendered by the previous board.

(b) In reviewing cases of individuals recommended for discharge, the Chief of Naval Personnel will in appropriate cases authorize probation. If it is the decision of the Chief of Naval Personnel that the individual be retained in the service on a probationary basis, then the commanding officer will be advised as to the terms of the probation. A discharge other than the type specified will not be given the probationer unless his case is reprocessed under the provisions of this subpart which govern discharge by reason of unsuitability, unfitness, or misconduct, as applicable, and such discharge is directed by the Chief of Naval Personnel. In all cases wherein a discharge, after probation has been granted by the Chief of Naval Personnel, is executed, the Chief of Naval Personnel will be advised by speedletter as to the reason.

[31 FR 10192, July 28, 1966]

§ 730.16 General provisions and restrictions relating to enlisted separations.

(a) *Effective time of discharge.* Subject to any law providing otherwise, the discharge of an enlisted person on active duty, regardless of the reason for separation, takes effect upon delivery of the discharge certificate. In the case of a person discharged while absent without authority or in civil confinement, constructive delivery of the discharge certificate is accomplished at the time it is signed by proper authority. If a discharge is effected as a result of a person's immediate entry in the same or any other component of the Armed Forces in the same or any other status, the discharge will, for administrative purposes, be dated as of the date preceding such entry or re-entry.

(b) *Effective time of release to inactive duty.* Subject to any law providing otherwise, the release to inactive duty of a Reservist who was called to active duty as a Reservist takes effect at the actual time of his arrival home or at the expiration of his authorized travel time, whichever is earlier. The release to inactive duty of members of the Regular Navy transferred to the Naval Reserve and concurrently released to inactive duty takes effect upon delivery of the separation documents.

NOTE: When a discharged member is seriously injured while returning home and is taken to a Navy hospital, he may be eligible for hospitalization and other benefits from the Veterans Administration and should be advised to file an appropriate claim with that agency.

(c) *Civilian clothing.* An enlisted member who is discharged by reason of unsuitability, security, unfitness, or misconduct with an honorable or general discharge or who is discharged for any reason with a dishonorable, bad conduct, or undesirable discharge shall surrender the outer garments and distinctive parts of the uniform which are in the member's possession at time of discharge. When the items of clothing authorized to be retained by the dischargee are insufficient tc provide

the dischargee with one outfit of civilian clothing suitable for wearing home, necessary items of civilian clothing may be issued at no cost to the dischargee to augment the retained clothing. These clothes shall be furnished without regard to the state of member's accounts or amount of personal funds in the member's possession. However, no extra items of clothing such as a spare shirt or socks and no accessories such as an umbrella or luggage may be issued to the dischargee. The items procured for issuance must be moderately priced but need not be the lowest quality available. Members transferred prior to the actual execution of the discharge shall take all their uniforms with them to the place to which transferred. Issuance of the outfit of civilian clothing under this paragraph is subject to the following exceptions:

(1) The clothing may be issued to a person discharged in absentia pursuant to article C-10201 (6) of the Bureau of Naval Personnel Manual only if he requests the clothing, and all conditions set forth in the first two sentences of this paragraph are met.

(2) The clothing is not to be issued to a person who is discharged while on leave granted in accordance with current instructions (see Secretary of the Navy Instruction 1050.3 (§ 719.206 of this chapter) or revisions thereof) to await completion of appellate review of a court-martial sentence which includes punitive discharge.

(For detailed instructions regarding issuance of civilian clothing, its cost, and recovery of uniforms of dischargees, see Bureau of Supplies and Accounts Manual, paragraph 25940.)

(d) *Wearing of uniform after discharge.* Enlisted personnel discharged with an honorable or general discharge (except those discharged by reason of unsuitability, security, unfitness, or misconduct), are entitled to retain their uniforms and may within 3 months after discharge wear them from place of discharge to their homes, except that persons who have served less than 6 months on active duty subsequent to last authorization of an initial clothing allowance, unless discharged to accept a direct commission or appointment as an officer or warrant officer, are entitled to retain only one complete uniform appropriate to the season. The 3-month period relates to the period between the date of discharge and the date of the person's arrival home, and does not permit the wearing of the uniform after arrival home, even though the 3-month period has not expired. Enlisted personnel discharged to accept a commission or appointment as an officer or warrant officer may retain all clothing in their possession.

(e) *Cash allowance.* An enlisted person who is discharged for any reason with a dishonorable, bad conduct, or undesirable discharge and who would be otherwise without funds to meet his immediate needs shall, upon discharge, be paid a sum not to exceed $25 or such portion thereof as will, together with other funds available to the individual concerned, total $25. The cash allowance is not payable to a member who is discharged while on leave granted in accordance with current instructions (see Secretary of the Navy Instruction (§ 719.206 of this chapter) or revisions thereof) to await completion of appellate review of a court-martial sentence which includes punitive discharge.

(f) *Not recommended for reenlistment.* Every enlisted person discharged who is not recommended for reenlistment shall be informed orally that fraudulent enlistment in any branch of the service undoubtedly will be detected by fingerprints, and that if concealment of previous service and discharge results in reenlistment that person will be subject to disciplinary action.

(g) *Information concerning the Honorable Discharge Button.* Information concerning the Honorable Discharge Button is set forth in article B-2107 of the Bureau of Naval Personnel Manual.

(h) *Information concerning recoupment of reenlistment bonus.* Information concerning recoupment of reenlistment bonus is set forth in article A-4204 of the Bureau of Naval Personnel Manual.

[29 FR 18287, Dec. 24, 1964]

§ 730.17 Cancellation of illegal enlistments.

(a) A legal enlistment may not be canceled. An illegal enlistment must be canceled. Illegal enlistments include those entered into when the enlisted person is:

(1) Intoxicated;

(2) Insane;

(3) A deserter from the military or naval forces of the United States in time of war (except such deserters as may be enlisted upon permission of competent naval authority thereunto authorized by the Secretary of the Navy).

(b) All cases of apparent illegal enlistment shall be reported immediately to the Chief of Naval Personnel. After confirmation of the facts, the Chief of Naval Personnel will direct the action to be taken and the disposition of the person concerned.

[24 FR 7452, Sept. 16, 1959]

§ 730.18 Conscientious objectors.

(a) Conscientious objectors are persons who by reason of religious training and belief have a firm, fixed, and sincere objection to participation in war in any form or the bearing of arms. No vested right exists for any member to be discharged from the Regular Navy or Naval Reserve at his own request, even for conscientious objection, before the expiration of his term of service, whether he is serving voluntarily or involuntarily. Administrative discharge prior to the completion of an obligated term of service will be effected only with the approval of the Chief of Naval Personnel.

(b) After entering naval service, a request for discharge based solely on conscientious objection which existed but was not claimed prior to induction or enlistment shall not be considered if such beliefs satisfied the requirements for classification as a conscientious objector pursuant to section 6(j) of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 456) and related provisions of law, and the member failed to request classification as a conscientious objector by the Selective Service System (SSS), or if his request for classification as a conscientious objector before entering military service was denied on the merits by the SSS and his present request for classification as a conscientious objector is based on essentially the same grounds, or supported by essentially the same evidence, as the request which was denied by the SSS. Claims growing out of the experiences prior to entering military service but which did not become fixed until after entry into the service will be considered.

(1) The following definitions will apply and, unless otherwise specified, the term "conscientious objector" includes both 1-O and 1-A-O conscientious objector classifications:

(i) A class 1-O conscientious objector is a person who by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.

(ii) A class 1-A-O conscientious objector is a person who by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a noncombatant status.

(2) Religious training and belief does not limit beliefs to traditional religious convictions. Belief in an external power or being, or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well-being also qualifies. The external power or being need not be deity in the conventional usage, but may be a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God in the usual sense, or, in the case of deeply held moral or ethical beliefs, a belief held with the strength and devotion of a traditional religious conviction. The term "religious training and belief" may include solely moral or ethical beliefs even though the applicant himself may not characterize these beliefs as "religious" in the traditional sense, or may expressly characterize them as not religious. The term "religious training and belief" does not include a belief which rests solely upon consideration of policy, pragmatism, expediency, or political views.

(3) Noncombatant service or noncombatant duties (1-A-O) (used interchangeably herein) include service as follows:

(i) Service in any unit of the Armed Forces which is unarmed at all times.

(ii) Service in the medical department of any of the Armed Forces, wherever performed.

(iii) Any other assignment the primary function of which does not require the use of arms in combat provided that such other assignment is acceptable to the member concerned and does not require him to bear arms or to be trained in their use.

(iv) Service aboard an armed ship or aircraft or in a combat zone provided the member concerned is not personally and directly involved in the operation of weapons.

(4) Noncombatant training is any training which is not concerned with the study, use, or handling of arms or weapons.

(c) A request for discharge or assignment to noncombatant duties on the grounds of conscientious objection will be handled on an individual basis, with final determination made by the Chief of Naval Personnel. If separation is deemed warranted, the type of discharge will be determined by the member's military record, the standards set forth in DOD Directive 1332.14,[1] and the procedural guidelines outlined below.

(d) There are no provisions for a member of the Navy to influence his change of station or active duty orders by submission of a request for designation or discharge as a conscientious objector. When a member on active or inactive duty submits a request for such designation or discharge, he shall be required to comply with active duty or transfer orders in effect at that time or subsequently received. Authorization for transfer of a member from his duty station solely because he has submitted such an application will not be granted.

(e) In evaluating requests for discharge based on conscientious objection, great care shall be exercised to assure the sincerity of the claim and that clear and concise discharge procedures are followed to preclude inviting or permitting abuse by unscrupulous members who may seek to avoid all obligations on the grounds of moral, ethical or religious beliefs. The procedures which shall be followed with respect to members who claim to be conscientious objectors are:

(1) A member enlisted or inducted into the naval service who claims to be a conscientious objector and states that he was so classified by his local board but his records do not so indicate, or claims he was erroneously denied SSS classification as a conscientious objector, or states he was denied a procedural right in his classification by the SSS shall be employed only in duties which involve the minimum practicable conflict with his asserted beliefs pending investigation and decision on the case. A statement shall be obtained from the member concerned and immediately forwarded with the commanding officer's comment to the Chief of Naval Personnel for referral to the National Headquarters, Selective Service System, for investigation.

(i) When it is determined that the member should have been classified as 1-O or 1-A-O but inadvertently was not so classified, the records will be corrected and the commanding officer will be directed to correct his records accordingly. Further disposition of the member will be directed by the Chief of Naval Personnel in accordance with the procedures set forth below.

(ii) When it is determined that no change in classification is warranted, the member will be notified to this effect by the Chief of Naval Personnel.

(2) A member who has served a portion of his minimum required (obligated) service and who requests discharge or noncombatant service for conscientious objection shall, to the extent practicable, be employed in duties which involve the minimum conflict with his asserted beliefs pending a decision on his case. Assignment to such duties should commence as soon as practicable after the commanding officer has received an application in writing in the format and containing the information specified below. Applications shall not be submitted on pre-

[1] Filed as part of the original document.

printed forms but shall contain the following information identified by corresponding paragraph numbers:

(i) Date of application.

(ii) Full name of applicant.

(iii) Social Security number.

(iv) Selective Service number.

(v) Service address.

(vi) Permanent home address.

(vii) Name and address of each school and college attended after age 16 together with the dates of attendance and the type of school (public, church, military, commercial, etc.).

(viii) Chronological list of all compensated and uncompensated occupations, positions, jobs, or types of work engaged in after age 16, except while a student in school or college. Include the type of work, name and address of employer, and the inclusive dates for each.

(ix) All former residences after age 16 including dates and addresses.

(x) Each parent's name, present address, and whether living or deceased.

(xi) The religious denomination or sect of spouse and/or each parent.

(xii) Whether application was made to the Selective Service System (Local Board) for classification as a conscientious objector prior to entry into the Armed Forces. If yes, state which local board and what decision was made by the Board, if known.

(xiii) When the applicant has served less than 180 days in the naval service, state whether he is willing to perform work under the Selective Service civilian work program for conscientious objectors if discharged as a conscientious objector and whether he consents to the issuance of an order for such work by his local Selective Service Board.

(xiv) A thorough description of the nature of the belief which requires the applicant to seek separation from the military service or assignment to noncombatant training and duty for reasons of conscience.

(xv) An explanation of how the applicant's beliefs have changed or developed, including an explanation of what factors (how, when, from whom, or from what source training was received and the beliefs acquired) caused the change in or development of conscientious objection beliefs.

(xvi) An explanation of when and why these beliefs became incompatible with military service.

(xvii) An explanation of the circumstances, if any, under which the applicant believes in the use of force under any foreseeable circumstances.

(xviii) An explanation of how the applicant's daily life style has changed as a result of his beliefs and what future actions he plans to continue to support his beliefs.

(xix) An explanation of what, in the applicant's opinion, most conspicuously demonstrates the consistency and depth of his beliefs which gave rise to this application.

(xx) Whether the applicant has ever been a member of any military organization or establishment before entering upon his present term of service. If yes, state the name and address of such organization together with reasons why he became a member.

(xxi) Whether the applicant is a member of a religious sect or organization. If yes, include the following:

(*a*) The name of the sect, and the name and location of its governing body or head, if known.

(*b*) When, where, and how the applicant became a member of said sect or organization.

(*c*) The name and location of any church, congregation, or meeting which the applicant customarily attends and the extent of the applicant's active participation therein.

(*d*) The name, title, and present address of the pastor or leader of such church, congregation, or meeting.

(*e*) A description of the creed or official statements, if any and if known, of said religious sect or organization in relation to participation in war.

(xxii) A description of the applicant's relationships with and activities in all organizations with which he is or has been affiliated, other than military, political, or labor organizations.

(xxiii) List and attach any additional information, such as letters, references, or official statements of organizations to which the applicant belongs or refers to in his application that he desires to be considered by the authority reviewing his application. The burden is on the applicant to obtain and forward such information.

(f) The Chief of Naval Personnel shall be informed by message if after submitting an application for designation or discharge as a conscientious objector, the member commits an offense punishable under the UCMJ or if at the time of submission of an application, the member is the subject of disciplinary action; and when disciplinary action has been completed. Final action on an application or an approved request for discharge will not be effected until all disciplinary action, including confinement if applicable, has been resolved.

(g) The applicant shall be personally interviewed by a chaplain who shall actively and critically examine the applicant's beliefs. The chaplain shall submit a written report containing his opinion of the nature and basis of the applicant's claim, sincerity, and depth of conviction in his claim of conscientious objection. The chaplain's report shall include a recommendation of disposition with the reasons for his conclusions. Such interview may be conducted by a chaplain who is a member of a regular or reserve component of any of the Armed Forces of the United States.

(h) The applicant shall be interviewed by a psychiatrist who is a member of a regular or reserve component of any of the Armed Forces, or by a medical officer if a psychiatrist is not reasonably available. Interview by a psychologist Medical Service Corps vice Medical Corps is not acceptable. The psychiatrist or medical officer shall submit a written report of psychiatric disorders which would warrant treatment or disposition through medical channels or such character or personality disorder which would warrant recommendation for appropriate administrative action. Comment concerning the sincerity or credibility of the applicant's claimed convictions may be included in the report.

(i) The chaplain's and psychiatrist's or medical officer's reports will become part of the case file. If the applicant refuses to participate, is uncooperative, or unresponsive in the course of an interview, this fact will be included in the statements of the chaplain and psychiatrist or medical officer.

(j) The applicant's commanding officer shall appoint an investigating officer in the grade of lieutenant commander or above, not necessarily a member of the applicant's command, to investigate the applicant's claim. If a qualified officer of this grade is not available, the commanding officer may appoint an officer of the grade of lieutenant who, in the opinion of the commanding officer, is well-qualified by reason of age, education, training, experience, and length of service. The officer so appointed shall not be in the immediate chain of command of the applicant and, if the applicant is a commissioned officer, shall be senior in both temporary and permanent grades to the applicant.

(1) Upon appointment, the investigating officer will review this article and, if possible, request a local Judge Advocate or legal officer to provide a briefing or summary of court decisions which have revised the criteria to be considered in developing comments and recommendations concerning conscientious objector applications. During the course of this investigation, the investigating officer shall obtain all necessary legal advice from the above officers.

(2) The investigating officer shall conduct a hearing on the application to afford the applicant an opportunity to present any evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority. The investigating officer shall actively and critically examine the applicant's beliefs, and any failure or refusal of the applicant to submit to questioning under oath or affirmation may be considered by the investigating officer in making his recommendation and evaluation of the applicant's claim. If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance.

(3) If the applicant desires, he shall be entitled, at his own expense, to be

represented by counsel who shall be permitted to be present at the hearing, assist the applicant in the presentation of his case, and examine all items in the file.

(4) The hearing will be informal in character and the rules of evidence employed by courts-martial shall not apply except that all oral testimony presented shall be under oath or affirmation. Any relevant evidence may be received. Statements obtained from persons not present at the hearing need not be made under oath or affirmation. The hearing is not an adversary proceeding.

(5) The applicant may submit any additional evidence that he desires (including sworn or unsworn statements) and present any witnesses in his own behalf, but he shall be responsible for securing their attendance. The installation or local commander shall render all reasonable assistance in making available as witnesses those military members of his command requested by the applicant. The applicant shall be permitted to question any other witnesses who appear and to examine all items in the file.

(6) A verbatim record of the hearing is not required. If the applicant desires such a record and agrees to provide it at his own expense, he may do so. If he elects to provide such a record, he shall provide a copy thereof to the investigating officer at the conclusion of the hearing and at no expense to the Government. In the absence of a verbatim record, the investigating officer will summarize the testimony of witnesses and permit the applicant or his counsel to examine the summaries and note for the record their differences from the investigating officer's summary. Copies of statements and other documents received in evidence will be made a part of the hearing record.

(7) A written report will be prepared at the conclusion of the investigation by the investigating officer stating whether the applicant appeared, whether he was accompanied by counsel, and, if so, the latter's identity; whether the nature and purpose of the hearing were explained to the applicant and understood by him; the investigating officer's conclusions concerning the underlying basis, sincerity, and depth of the applicant's conscientious objection and beliefs, including the reasons for such conclusions; and attaching documents, statements, other material received during the investigation, and summaries of the testimony of the witnesses presented (or a verbatim record of the testimony if such record was made).

(8) The investigating officer shall fully advise and counsel the applicant concerning the provisions of 38 U.S.C. 3103 which provides in pertinent part that the discharge of any person on the grounds of conscientious objection who refused to perform military duty, to wear the uniform, or otherwise to comply with lawful orders of competent military authority shall bar all rights (except Government insurance) of such persons under laws administered by the Veterans' Administration based upon the period of service from which discharged or dismissed. The only exception is in cases where it is established to the satisfaction of the Administrator, Veterans' Administration, that the member was insane. After counseling, the member will be required to sign and date the following statement, a copy of which shall be forwarded as part of the record of the case:

I have been advised of the provisions of 38 U.S.C. 3103 concerning possible nonentitlement to benefits administered by the Veterans' Administration due to discharge from the military service as a conscientious objector under certain conditions. I understand that a discharge as a conscientious objector, who refused to perform military duty or otherwise to comply with lawful orders of competent military authority, shall bar all rights, based upon the period of service from which discharged, under any laws administered by Veterans' Administration except my legal entitlement (if any) to any war risk, Government (converted) or National Service Life Insurance.

(9) The investigating officer's report shall include his recommendations for disposition of the case and his reasons therefor. Subject to the provision that an applicant claiming 1-O status will not be granted 1-A-O status as a compromise, the actions recommended shall be limited to denial of any classification as a conscientious objector, classification as 1-A-O conscientious

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objector, or classification as 1-O conscientious objector.

(10) The investigating officer's report along with the member's application, all interviews with chaplains or doctors, the applicant's statement concerning Veterans' Administration benefits, evidence received as a result of the investigating officer's hearing, and any other items submitted by the applicant in support of his case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearing. A copy of the record will be furnished to the applicant at the time it is forwarded to his commanding officer. The applicant shall be informed that he has the right to submit a rebuttal within 5 working days after receiving his copy of the record. The investigating officers' report shall include the following dated statement signed by the applicant:

I received this date a copy of the record (as defined in BUPERSMAN article 1860120.10j) [2] of my conscientious objector hearing. I understand that I have the right to submit a written rebuttal to this record, provided my rebuttal is submitted to the investigating officer within 5 working days after this date. I (do)/(do not) desire to submit a rebuttal.

(k) The commanding officer shall review the record of the case for completeness and may return it to the investigating officer for further investigation. When the record is complete, the commanding officer shall forward it with his personal recommendations and the reasons therefor to the Chief of Naval Personnel for final action. If the applicant's request is for assignment to noncombatant duties, the commanding officer's recommendation shall include a statement concerning whether the applicant should be assigned to noncombatant duties or training and, if so, whether he is qualified and desires assignment to the Hospital Corps or, in the case of officers, to the Medical Corps, Medical Service Corps, Dental Corps, or Nurse Corps. If the member does not desire such duties or training, or is not qualified, the commanding officer shall state whether his services can be utilized on board his present duty station if assigned a limited duty designator L-8. The commanding officer's forwarding endorsement shall include the applicant's rebuttal to the record, if any.

(l) The sole purpose of these procedures is to determine whether an applicant qualifies for classification or discharge as a conscientious objector. Specifically, interviewers and commanding officers should put aside considerations of the applicant's value to the service and focus solely on the issue of whether the applicant meets the criteria for the type of conscientious objector status he seeks. Comments and recommendations by chaplains, investigating officers, and commanding officers shall be related directly to that determination. Recommendations for discharge for reasons other than conscientious objection are not appropriate and should be processed in accordance with applicable regulations.

(m) Members who were classified 1-A-O by Selective Service prior to induction shall, upon induction, be transferred for recruit training and shall be subject to noncombatant service and training. The member will be required to sign and date the following statement:

I have been counseled concerning designation as a conscientious objector. Based on my religious training and belief, I consider myself to be a conscientious objector within the meaning of the statute and regulations governing conscientious objectors and am conscientiously opposed to participation in combatant training and service. I request assignment to noncombatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces.

(n) The chaplain, hearing officers, and others, except the psychiatrist, who interview the applicant to determine the validity of his application shall thoroughly evaluate the applicant and the application in the light of all relevant circumstances. Sincerity and beliefs generally cannot be proved or disproved by direct evidence other

[2] See § 730.18.

than the applicant's own statement in support of his application. Nevertheless, sincerity and beliefs may be proved or disproved by circumstantial evidence, that is, by facts and circumstances from which, alone or in connection with other facts, the interviewing officer may, according to the common experiences of mankind, reasonably infer the existence or nonexistence of depth and sincerity of beliefs. Thus circumstantial evidence, such as the applicant's past conduct and the history of the development of his beliefs, is highly relevant in evaluating the sincerity of his claim and whether his beliefs are deeply held. The timing of a claim of conscientious objection is also a relevant circumstance, such as when the applicant claims his beliefs became fixed immediately prior to hazardous duty or shortly after termination of educational benefits, or when there is a long period between the assertion of conscientious objection beliefs and submission of a formal application.

(1) In evaluating an applicant, an interviewing officer, including the investigating officer, may consider his personal impressions of the applicant, such as the applicant's demeanor and the manner in which he answers questions. Consideration should be given to all background information and any outward manifestations which tend to support or rebut the applicant's claim. Some examples are:

(i) How the applicant acted when the opportunity arose to assert beliefs consistent with those now asserted.

(ii) Whether he accepted or rejected a program which would extend his obligated service.

(iii) Whether he volunteered or requested exclusion from certain billets.

(iv) Whether he accepted or rejected a promotion which would require additional responsibility and support of the military establishment.

(v) Whether he accepted or rejected offers for leave or assignments which would require less participation in military functions.

(2) Applicants should be carefully evaluated to ensure they are not objecting to military service solely on the basis of a false premise. For example, an applicant may state he cannot serve because he is opposed to murder, organized killing for the sake of ideology, military ventures to gain territory or national wealth, and similar reasons which he indicates to be policies of the Government or the Armed Services. Political opposition to national policies is not necessarily an indication of an applicant's objection to war on a moral, ethical, or religious basis.

(3) After weighing all the information, either direct or circumstantial, if an interviewer or investigating officer is not convinced of the beliefs or sincerity of the applicant, he should recommend the application be disapproved since the burden is upon the applicant to establish his beliefs and sincerity. If interviewers or investigating officers do not consider an applicant meets the necessary criteria or is not sincere, they shall provide the basis for their opinions.

(4) When interviewers and investigating officers consider that an applicant meets the criteria for classification as a conscientious objector, they shall give a clear and detailed explanation of why and how they consider the applicant meets the necessary criteria for such classification. This explanation shall discuss any contradictory facts indicating nonqualification or insincerity and rationalize the opinion in the light of the contradictory indicia.

(o) All claims of conscientious objection will be judged by SSS standards used in determining 1-O or 1-A-O classification of draft registrants prior to induction. Subject to the limitations set forth in this article concerning consideration for discharge from the naval service based solely on conscientious objection which existed but was not claimed prior to induction or enlistment, an application for conscientious objector status may be approved for any member who is conscientiously opposed to participation in war in any form when opposition is founded on religious training and belief as defined in this article, and whose position is sincere and deeply held.

(1) A true conscientious objector's convictions must be against all wars rather than a specific war. A member who desires to choose the war in which he will participate is not a con-

scientious objector under the law. A belief in a theocratic or spiritual war between the powers of good and evil, where the weapons of warfare are spiritual and not carnal, does not constitute a willingness to participate in "war" within the meaning of this article.

(2) In order to find that an applicant's moral and ethical beliefs are against participation in war in any form and are held with the strength of traditional religious convictions, the applicant must show that these moral and ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly found in traditional religious convictions. In other words, the belief upon which conscientious objection is based must be the primary controlling force in the applicant's life.

(3) A primary factor to be considered is the sincerity with which the belief is held. Great care must be exercised in seeking to determine whether asserted beliefs are honestly and genuinely held. The important consideration is not whether the applicant is sincere in wanting to be designated a conscientious objector, rather whether his asserted convictions are sincerely held. Sincerity is determined by an impartial evaluation of the applicant's thinking and living in its totality, past and present. Care must be exercised in determining the integrity of belief and the consistency of application. Information presented by the applicant should be sufficient to convince that the applicant's personal history reveals views and actions strong enough to demonstrate the belief upon which conscientious objection is based is the primary controlling force in his life and that expediency or avoidance of military service is not the basis of his claim. The conduct of an applicant, in particular his outward manifestation of the beliefs asserted, will be carefully examined and given substantial weight in evaluating the application.

(i) Relevant factors that should be considered in determining an applicant's claim of conscientious objection include:

(*a*) Training in the home and church.

(*b*) Whether general demeanor and pattern of conduct support asserted beliefs.

(*c*) Participation in religious activities.

(*d*) Whether ethical or moral convictions were gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated.

(*e*) Credibility of the applicant.

(*f*) Credibility of persons supporting the claim.

For example, the applicant may have made some major commitments during the time his beliefs were developing which are inconsistent with his claim. He may have applied for conscientious objector status shortly after having been rejected for a special Navy program. He may have applied after becoming aware of the prospect of hazardous or other undesirable duty. Taking the military oath of office shortly before applying for conscientious objector status may be evidence of insincerity in a given case. These examples are noteworthy because of their frequent recurrence. The potential relevant areas of inquiry are limitless.

(ii) Particular care must be exercised not to deny the existence or bona fide beliefs simply because those beliefs are incompatible with one's own. Church membership or adherence to particular theological tenets are not required to warrant separation or assignment to noncombatant training and service for conscientious objectors. Mere affiliation with a church or other group which advocates conscientious objection as a tenet of its creed is not necessarily determinative of an applicant's position or belief. Conversely, affiliation with a church or group which does not teach conscientious objection does not necessarily rule out adherence to conscientious objection beliefs in any given case. Where an applicant is or has been a member of a church, religious organization, or religious sect, and where his claim of conscientious objection is related to such membership, inquiry may properly be

made as to the fact of membership and the teaching of the church, religious organization, or religious sect, as well as the applicant's religious activity. The fact the applicant may disagree with, or not subscribe to, some of the tenets of his church does not necessarily discredit his claim. The personal convictions of each applicant will be controlling so long as they derive from his moral, ethical, or religious beliefs. An applicant who is otherwise eligible for conscientious objector status may not be denied that status simply because his conscientious objection influences his views concerning the nation's domestic or foreign policies. The task is to decide whether the beliefs professed are sincerely held and whether they govern the claimant's actions in both word and deed.

(4) The burden of establishing a claim of conscientious objection as grounds for separation or assignment to noncombatant training and service is on the applicant. To this end, he must establish the following by clear and convincing evidence:

(i) That the nature or basis of his claim comes within the definition and criteria prescribed herein for conscientious objection.

(ii) That his belief in connection therewith is honest, sincere, and deeply held. He also has the burden of determining and setting forth the exact nature of his requests, i.e., whether for separation based on conscientious objection (1-O) or for assignment to noncombatant training and services based on conscientious objection (1-A-O).

(5) An applicant claiming 1-O status will not be granted 1-A-O status as a compromise. He may be assigned noncombatant status if the record of the case clearly indicates that his beliefs are actually such that he is qualified as a noncombatant but not for discharge as a conscientious objector.

(6) Commanding officers are authorized to return to an applicant, without action, any second or subsequent application that is based upon essentially the same grounds, or supported by essentially the same evidence, as a previous application dissapproved by the Chief of Naval Personnel. This authority does not preclude forwarding such an application if the commanding officer considers review of the application may be warranted.

(p) When a determination has been made on the merits of the application by the Chief of Naval Personnel, the following actions shall be taken:

(1) Members determined by the Chief of Naval Personnel to meet the criteria of 1-O classification will normally be discharged for the convenience of the Government. To avoid possible future confusion, conscientious objection will be specifically cited in the discharge document as the supporting reason when that is the sole reason for discharge. Pending separation, the member shall continue to be assigned duties providing the minimum practicable conflict with his professed beliefs and shall be required to maintain the same standards of performance and behavior as other members assigned to his unit.

(2) Members (volunteers and inductees) with less than 180 days active duty who are determined to be bona fide conscientious objectors (1-O classification) and whose request for separation is made in time to permit discharge prior to completion of 180 days duty shall be separated for the convenience of the Government by reason of conscientious objection to permit completion of the remaining service obligation in the civilian work program administered by the Selective Service System. In such cases, the Selective Service System shall be promptly notified of the date of discharge from the naval service, notified of the fact that the member has not completed 180 days active duty, and requested to induct the individuals for alternate service as provided in the Military Selective Service Act.

(3) Members for whom 1-A-O classification is determined to be appropriate by the Chief of Naval Personnel will be reassigned to noncombatant training and duties as indicated below or discharged from military service at the discretion of the Chief of Naval Personnel. Members reassigned to noncombatant duties shall be required to sign and date the following statement:

I have been counseled concerning designation as a conscientious objector. Based on my religious training and belief, I consider myself to be a conscientious objector within the meaning of the statute and regulations governing conscientious objectors and am conscientiously opposed to participation in combatant training and service. I request assignment to noncombatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces.

(4) Determination by the Chief of Naval Personnel shall be final with respect to the administrative separation of members.

(5) Any member reassigned to noncombatant duties or returned to his normal duty assignment who, in the judgment of the commanding officer concerned, demonstrates or has previously demonstrated his inability or unwillingness to cooperate in a manner which constitutes the basis for disciplinary action shall be disciplined as in the case of any other member of the naval service who demonstrates similar behavior.

(q) Personnel who are designated as conscientious objectors and retained in the service for noncombatant training or duties will be assigned as follows:

(1) After completion of recruit training, enlisted or inducted members may be transferred to the Hospital Corps for further training provided they volunteer and meet the requirements. Qualified members previously classified 1-A-O and subject to induction into certain staff corps related to medical fields, may be utilized as officers only in those staff corps, and only with the approval of the Chief of Naval Personnel. Such members shall not be allowed to avoid the important or hazardous duties which are the responsibility of all members of the medical organization. Any member who does not meet the requirements for this training, who fails to complete the prescribed course of instruction, or who otherwise cannot be assigned to this training or duty, shall be employed in other noncombatant duties if retained in the naval service.

(2) If a member cannot be utilized in a noncombatant assignment, the commanding officer shall report this fact to the cognizant personnel distributor who shall transfer the member to a noncombatant duty assignment.

[37 FR 19124, Sept. 19, 1972]

Subpart B—Marine Corps

Types of Discharges of Enlisted Personnel

Source: 31 FR 16528, Dec. 28, 1966, unless otherwise noted.

§ 730.50 General.

(a) *Right and duty.* The Marine Corps has the right, obligation, and duty to separate from the service, with an appropriately characterized discharge certificate, members who are entitled to or who have earned discharge, and members who clearly demonstrate that they are unqualified for retention. At the same time such members have rights which shall be protected.

(b) *Controlling provisions.* All discharges and separations of enlisted personnel will be governed by and effected in accordance with the provisions of §§ 730.50-730.76, which sections are applicable to all enlisted and inducted personnel of the Marine Corps and Reserve components thereof.

(c) *Explanation and counseling.* All commands shall establish appropriate procedures to insure that each member receives periodic explanations and separation counseling as follows:

(1) *Periodic explanations.* The various types of discharge certificates; the basis for their issuance; their possible effect upon the member's reenlistment, veterans' benefits, future civilian employment, and other situations in civilian life wherein the nature of service rendered in, or the character of separation from, the Armed Forces may have a bearing; and related matters will be fully explained to each member at each time the articles of the Uniform Code of Military Justice are explained, pursuant to article 137 thereof. The fact that this explanation has been given will be recorded on page 11 of the member's service record books. Failure on the part of the member to receive or to

understand such explanation may be considered by an administrative discharge board and by a Discharge Authority, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of discharge to be awarded. However, in no event shall the failure of the member to receive or to understand such explanation be considered a defense in an administrative discharge proceeding or a bar thereto.

(2) *Separation counseling.* The purpose and scope of the Navy Discharge Review Board (Part 724 of this chapter) and the Board for Correction of Naval Records (Part 723 of this chapter) will be explained during the separation processing of any member, whether or not under military control, being discharged under other than honorable conditions. The contents of figure 1 may be used for this purpose.

FIGURE 1

PURPOSE AND SCOPE OF THE NAVY DISCHARGE REVIEW BOARD AND THE BOARD FOR CORRECTION OF NAVAL RECORDS

(a) *Navy Discharge Review Board.* The Navy Discharge Review Board, consisting of five members, was established pursuant to 10 U.S.C. 1553 in order to review, on its own motion; or upon the request of any former member of the Navy or Marine Corps; or in the case of a deceased member or former member of the Navy or Marine Corps, upon the request of his surviving spouse, next of kin, or legal representative, or if incompetent by his guardian; the type and nature of final discharges in order to determine whether or not, under reasonable standards of naval law and discipline, the type and nature of the discharge should be changed, corrected, or modified, and, if so, to decide what change, correction or modification should be made. The Board may also issue a new discharge in accord with the facts presented to it.

(1) The Navy Discharge Review Board may review all final separations from the naval service, irrespective of the manner evidenced or brought about, except either a discharge awarded by a general court-martial, or a discharge executed more than 15 years before an application for review is submitted. Such review is based on all available records of the Department of the Navy pertaining to the former member, and such evidence as may be presented to or obtained by the Board. The former member's service record book is but one of the records of the Department of the Navy which may be considered by the Board.

(2) The Navy Discharge Review Board has no authority to revoke any discharge; nor to reinstate any person in the military service subsequent to discharge; nor to recall any person to active duty; nor to waive prior disqualifying discharges to permit enlistment in the naval service or any other branch of the Armed Forces; nor to cancel enlistment contracts; nor to change, correct, or modify any document other than the discharge document; nor to change the reason for discharge from or to physical disability; nor to determine eligibility for veterans' benefits. The Board may, in its discretion, record a recommendation for reenlistment as part of its decision in any case, however, such recommendation is not binding upon the Commandant of the Marine Corps nor upon the Secretary of the Navy.

(3) Review by the Board of the type and nature of a discharge is subject to review only by the Secretary of the Navy. Unless otherwise authorized by the Secretary of the Navy after final adjudication, further proceedings before the Board are permitted only upon the basis of newly discovered relevant evidence not previously considered by the Board, and then only upon the recommendation of the Board and approval by the Secretary of the Navy.

(4) Relevant and material facts concerning the former member concerned found by a general or special court-martial, or by a court of inquiry or board of investigation where the former member was in the status of a defendant or an interested party, as approved by the reviewing authorities, shall be accepted by the Board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion. Relevant and material facts stated in a specification to which the former member concerned pleaded guilty before a general or special court-martial, or where, upon being confronted by such a specification, the former member elected to request discharge for the good of the service, shall be accepted by the Board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion, or unless the former member shall show to the Board's satisfaction, or it shall otherwise appear, that arbitrary or coercive action was taken against him at the time, which action was not apparent to the reviewing authority from the face of the record.

(5) The evidence before the Board which may be considered in connection with a particular discharge document will normally be restricted to that which is relevant and material to the former member's particular term of Marine Corps service terminated by that discharge document, or to the former

member's character, conduct, physical condition, or other material matter as revealed at the time of his entry into that particular term of Marine Corps service or during that term of Marine Corps service, or at the time of his separation therefrom.

(6) In order to warrant a change, correction, or modification of the original document evidencing separation from the Marine Corps, the former member concerned must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the original document was improperly or inequitably issued under standards of naval law and discipline existing at the time of the former member's original separation, or under such standards differing therefrom in the former member's favor which, subsequent to his separation, were made expressly retroactive to separations of the type and character had by the former member.

(b) *Board for Correction of Naval Records.* The Board for Correction of Naval Records, consisting of not less than three members, was established pursuant to 10 U.S.C. 1552, and considers all applications properly before it for the purpose of determining the existence of an error or an injustice, and to make appropriate recommendations to the Secretary of the Navy. Application may be made by the member or former member, or such other persons as the Board determines to be competent for such purpose. The Board for Correction of Naval Records, unlike the Navy Discharge Review Board, may review discharges awarded by a general court-martial. Other types of cases reviewed by this Board include, but are not limited to, those involving requests for physical disability retirement; the cancellation of a physical disability discharge, and substituting, in lieu thereof, retirement for disability; an increase in the percentage of physical disability; the removal of derogatory material from an official record; the review of nonjudicial punishment; and the restoration of rank, grade, or rating. Also, this Board will review the case of a person who is in a Reserve component and who contends that his release from active duty should have been honorable, rather than under honorable conditions. When the relief sought in a case has been denied, i.e., when other available remedies have been exhausted without success, application for relief may then be filed with the Board for Correction of Naval Records.

(1) The law requires that application be filed with the Board for Correction of Naval Records within 3 years of the date of the discovery of the error or injustice. However, the Board is authorized to excuse the fact that the application was filed at a later date if it finds it to be in the interests of justice to consider the application. The Board is empowered to deny an application without a hearing if it determines that there is insufficient evidence to indicate the existence of probable material error or injustice to the respondent.

(2) No application will be considered by this Board until the applicant has exhausted all other effective administrative remedies afforded him by existing law or regulations, and all such other legal remedies as the Board shall determine are practical and appropriately available to the applicant.

(3) An application to the Board for the correction of his military record shall not operate as a stay of any other proceedings being taken with respect to the person involved.

(4) The Board will consider the applicant's case on the basis of all the material before it, including but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or on behalf of the applicant, and all available pertinent records in the Department of the Navy. The applicant's service record is but one of the records which may be considered by the Board.

(5) The record of proceedings of the Board will be forwarded to the Secretary of the Navy, who will direct such action in each case as he determines to be appropriate.

(c) *Condition for relief.* In connection with review of executed discharges by both the Navy Discharge Review Board and the Board for Correction of Naval Records, there is no law or regulation which provides that an unfavorable discharge may be changed to a more favorable discharge solely because of the expiration of a period of time after discharge during which the respondent's behavior has been exemplary. (10 U.S. Code 1571-1577 (Public Law 89-690 of October 15, 1966), providing for the issuance of an Exemplary Rehabilitation Certificate by the Department of Labor to a former serviceman who demonstrates a successful period of rehabilitation in the civilian community, does not change or effect in any way the character of the former serviceman's discharge from the service, nor does such Certificate entitle him to any benefits under the laws of the United States over and above those accruing to him under his discharge from the service.) To permit relief by either of these Boards, an error or injustice must be found to have existed during the period of the enlistment in question and the respondent's good conduct after discharge, in and of itself, is not sufficient to warrant changing an unfavorable discharge to a more favorable type of discharge.

(d) *Applications.* Applications for review and explanatory matter may be obtained by writing the Board for Correction of Naval Records, or the Navy Discharge Review

Board, as appropriate, Department of the Navy, Washington, D.C. 20370.

(e) *Regulations and procedures.* Current administrative regulations and procedures governing the Navy Discharge Review Board are contained in NAVEXOS P-70 (1-69) [Part 724 of this chapter]. Current procedures of the Board for Correction of Naval Records are contained in NAVEXOS P-478 (Rev. Dec. 2, 1961) [Part 723 of this chapter].

(d) *Continental United States.* As used in §§ 730.50 to 730.126, the term "continental United States" means the United States, except Alaska and Hawaii, unless otherwise indicated.

(e) *Definitions.* As used within this subpart, the following definitions will apply:

(1) *Discharge.* Complete severance from all military status.

(2) *Release from active duty.* Termination of active duty status and transfer or reversion to a reserve component not on active duty.

(3) *Separation.* A general term which includes discharge and release from active duty. This definition is broader than the definition of the word "separation" used in paragraph 1900.1a, Marine Corps Manual.

(4) *Administrative separation.* Discharge or release from active duty upon expiration of enlistment, period of induction, or other required period of service, or prior thereto, in the manner prescribed herein, by law, by the Secretary of Defense, or by the Secretary of the Navy, but specifically excluding punitive separation by the sentence of a general or special court-martial.

(5) *Military record.* A member's military record comprises all incidents and events of his behavior while in military service, including his general comportment and performance of duty, and reflects the character of the service he has rendered while a member of an armed service. The military record is not limited to entries in a member's service record book, or other specific service documents, but includes all available information pertaining to the individual while a member of an armed service.

(6) *Prior enlistment or period of service.* Service in any component of the armed forces, including the Coast Guard, which culminated in the issuance of a discharge certificate, certificate of service, or report attesting to the type and character of service rendered during that period.

(7) *Separation boards*—(i) *Administrative discharge board.* A board appointed within the purview of §§ 730.54 (b), 730.65(c)(2), 730.66(f), 730.67(c), 730.69, and 730.70(a) to render findings based on the facts of a case, and to recommend a respondent's retention in or separation from the service, and if separation is recommended, to further recommend the reason therefor, and the type of separation or discharge certificate to be furnished. See § 730.73.

(ii) *Dependency or hardship separation board.* A board appointed pursuant to § 730.63(h) to study and evaluate all available relevant information, to interview the applicant, and to make recommendations concerning the ultimate disposition of the case of a member who applies for discharge or release from active duty for reason of dependency or hardship within the purview of § 730.63.

(8) *Discharge Authority.* An official who is, under the provisions of this subpart, authorized to take final action with respect to specified types of administrative discharges. Whenever a Discharge Authority is designated in this subpart, either the official so designated, or his temporary successor in command, is authorized to act as a Discharge Authority. As used in this connection, the phrase "Marine general officers in command" contemplates those Marine commanders in the chain of command between the respondent and the Commandant of the Marine Corps.

(9) *Respondent.* A member who has been notified, as prescribed in this subpart, that action has been initiated to separate him under a specified provision of this subpart.

(10) *Counsel.* A lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice, unless the officer empowered to convene an administrative discharge board having jurisdiction over the member's case (or in cases involving proceedings to vacate a suspended administrative discharge, the officer exercising special court-martial jurisdiction over the re-

spondent) certifies in the permanent record the nonavailability of a lawyer so qualified, and sets forth the qualifications of the substituted nonlawyer counsel and the reasons for the nonavailability of lawyer counsel. See also §§ 730.72, 730.73, and 730.75.

(11) *Member.* An enlisted or inducted man or an enlisted woman of the Marine Corps or Reserve component thereof.

(12) *Convening authority.* The officer who orders the convening of, or who is empowered to order the convening of, the administrative discharge board which initially hears, or (in the event the respondent's case is not actually presented to a board) which would initially hear the respondent's case.

(13) *General bases for administrative discharge.* (i) There are 11 general bases for administrative discharge, as specifically set forth in § 730.51(b) (1)-(11), inclusive.

(ii) In increasing order of favorability to a member, the general bases for administrative discharge which may be utilized by a Discharge Authority pursuant to the provisions of §§ 730.51(r) and 730.73(i)(2)(iii) are as follows:

(*a*) Misconduct, unfitness, security, or request for discharge for the good of the service.

(*b*) Unsuitability.

(*c*) Convenience of the Government.

(14) *Specific bases for administrative discharge.* The specific basis for an administrative discharge is the particular reason for a discharge set forth in this subpart by a paragraph under the section prescribing the general basis for a discharge. For example, "unfitness" is considered to be a general basis for an undesirable discharge, while "an established pattern for shirking" would constitute the specific basis for such discharge.

§ 730.51 Types and reasons for discharge or release from active duty; general instructions.

(a) *Types.* The five types of discharge, with their corresponding character of separation, are as follows. The first three types of discharge are administrative, and the fourth and fifth types of discharge are punitive:

Type of discharge	Character of separation	Given by—
Honorable discharge	Honorable	Administrative action.
General discharge	Under honorable conditions	Do.
Undesirable discharge	Conditions other than honorable	Do.
Bad conduct discharge.	do	General or special court-martial.
Dishonorable discharge.	Dishonorable	General court-martial.

(b) *General bases.* There are 12 general bases for discharge; the first 11 of which are the general bases for *administrative* discharge or release from active duty, as follows:

(1) *Expiration of enlistment or fulfillment of service obligation, as applicable.* Discharge with an honorable or a general discharge, or release from active duty, as warranted by the member's military record. See § 730.58.

(2) *Convenience of the Government.* Discharge with an honorable or a general discharge, or release from active duty, as warranted by the member's military record, for any of the reasons enumerated in § 730.61.

(3) *Own convenience.* Discharge with an honorable or general discharge, or release from active duty, as warranted by the member's military record, on an individual basis, in accordance with the provisions of § 730.62.

(4) *Dependency or hardship.* Discharge with an honorable or general discharge, or release from active duty, as warranted by the member's military record, in accordance with the provisions of § 730.63.

(5) *Minority.* Discharge with an honorable or general discharge, as warranted by the member's military record, or release by voidance of contract, upon a determination that the

individual's age was misrepresented upon enlistment or induction, in accordance with the provisions of § 730.64.

(6) *Disability.* Discharge with an honorable or general discharge, as warranted by the member military record, when the member's has been determined to be unfit, by reason of physical disability to perform the duties of his office, rank, grade, or rating, and is not entitled to retirement under the provisions of Chapter 61, Title 10, U.S. Code. See § 730.60.

(7) *Unsuitability.* Discharge by reason of unsuitability, with an honorable or general discharge, as warranted by the member's military record. See § 730.65.

(8) *Unfitness.* Discharge by reason of unfitness, with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge. See § 730.66.

(9) *Misconduct.* Discharge by reason of misconduct, with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge. See § 730.67.

(10) *Request for discharge for the good of the service.* Discharge by reason of request for discharge for the good of the service, with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge, where a member's conduct rendered him triable by court-martial for an offense punishable by a punitive discharge, subject to the procedures and safeguards specified elsewhere in this subpart. See § 730.70. As used in this subparagraph, the phrase "triable by court-martial" includes alleged offense(s), in violation of the Uniform Code of Military Justice, committed under circumstances where a court-martial would have had jurisdiction over both the member and his alleged offense(s) at the time such offense(s) were allegedly committed. Acceptance of a request for discharge for the good of the service and a resultant discharge based thereon does not require that a case be perfected against a member. Nor is it required that the Discharge Authority have available to him legally admissible evidence sufficient to judicially establish the member's guilt of the alleged offense(s) beyond a reasonable doubt. An offense(s) shall not be considered to be "not triable" because, before a court-martial, the member would have available to him one or more motions in bar of trial. See Executive Order 10214, as amended, Manual for Courts-Martial, 1951, paragraph 68.

(11) *Security.* Discharge, under conditions and procedures stipulated by the Secretary of the Defense when retention is not clearly consistent with the interests of national security. See § 730.69 and Part 729 of this chapter.

(12) *Sentence of a court-martial.* Discharge with a finally approved, unsuspended bad conduct discharge or dishonorable discharge adjudged by sentence of a court-martial. See § 730.68.

(c) *Retention or separation.* In determining whether a member should retain his current military status, or be administratively separated, his entire military record, including records of nonjudicial punishment imposed during a prior enlistment or period of service, all records of convictions by courts-martial, and any other factors which are material and relevant, may be evaluated. Acquittals, charges which have been preferred and dropped, etc., will not ordinarily be considered (see, however, § 730.54(e)(2)). Commanding officers investigating officers, administrative discharge boards, Discharge Authorities, and other agencies charged with making recommendations or determinations as to a member's retention or administrative separation, will consider records of nonjudicial punishment imposed during a prior enlistment or prior period of service only if such records of punishment have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

(1) Cases in which circumstances may warrant the use of records of nonjudicial punishment imposed during a prior enlistment or a prior period of service shall ordinarily be limited to those involving patterns of conduct which become manifest only over an extended period of time.

(2) When a member has been awarded nonjudicial punishment during his current enlistment or current period of service, isolated incidents and events which gave rise to the nonjudicial punishment and which are remote in time or which have little or no probative value in determining whether retention or administrative separation should be effected, shall not be considered in making the determination to retain or separate the member. By the same token, any other isolated incidents and events concerning the member, which are remote in time or which have little or no probative value in determining whether the member should be retained or administratively separated, shall not be considered in making the determination to retain or separate him.

(3) If a decision is made that a member should be administratively separated, then the provisions of § 730.51(d) apply in determining the type of discharge. It is of paramount importance to recognize that the decision to retain or discharge a member must be made before any decision can be reached as to the type of discharge which may be appropriate.

(d) *Type and character of discharge or separation.* Regardless of the bases for a discharge, and regardless of the time when the act(s) or omission(s) occurred upon which the discharge is based, the type and character of the discharge certificate or report issued upon a member's administrative separation will be determined solely by the member's military record during his current enlistment or period of service, plus any lawful extensions thereof. The following shall not be considered in determining the type and character of the discharge certificate or report of separation to be issued, even though they may influence the decision to discharge the member.

(1) Activities which have occurred during any of the member's periods of service prior to his current enlistment or current period of service or any lawful extensions thereof, including, but not limited to, records of conviction by court-martial, records of nonjudicial punishment, records of absence without leave, or the commission of other offenses for which punishment was not imposed; or

(2) Activities which have occurred prior to the member's entry into any period of service, excepting deliberate material misrepresentations, including the omission or concealment of facts which, if known at the time thereof, would have reasonably been expected to have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction. Pertinent provisions are contained in MCO P1100.61, Recruiting Service Manual, Part B, or revisions thereof, and, concerning preservice homosexual acts or tendencies, SECNAV Instruction 1900.9 or revisions thereof and § 730.67(b)(2)(vi).

(e) *Suspension of execution.* A Discharge Authority, or higher authority, may suspend the execution of any approved administrative discharge, in accordance with § 730.75, in order to afford a deserving member a specified probationary period of sufficient length to demonstrate his successful rehabilitation.

(f) *Physical examination.* The Manual of the Medical Department, article 15-48, requires a thorough physical examination by a medical officer prior to discharge in the case of every enlisted member on active duty not discharged or retired for physical disability. The Manual of the Medical Department, article 16-13, contains instructions pertaining to the physical examination of members whose discharge is approved and who are confined by civilian authorities. See also §§ 730.51(q) and 730.105.

(g) *Type of discharge.* Where higher authority directs discharge of a member by reason of expiration of enlistment, convenience of the Government, own convenience, dependency or hardship, minority, disability, or unsuitability, and such authority does not specify the type of discharge or character of separation, the commander effecting the discharge will determine the type of discharge as honorable or general, based on the military record of the individual, in accordance with the applicable provisions of this subpart.

(h) *Report to Naval Intelligence unit.* Any information coming to the

attention of a command which is of the nature described below shall be reported immediately to the nearest component of Naval Intelligence, with a copy to the Commandant of the Marine Corps (Code DK). In the case of commands remote from any local Naval Intelligence component, communication should be made directly to the Office of Naval Intelligence, Naval Investigative Service, Washington, D.C. (SECNAV Instruction 5500.27, or revisions thereof):

(1) Members discharged with or because of an abnormal mental condition, which, in the opinion of competent medical authority, is deemed to constitute a threat to the safety of others.

(2) Members discharged for reasons of security, by reason of disability, by reason of unsuitability, by reason of unfitness, by reason of misconduct, or by reason of request for discharge for the good of the service, and who meet one or more of the following criteria:

(i) Evidence of emotional instability, or irrational or suicidal behavior;

(ii) Expressions of strong or violent anti-U.S. sentiment;

(iii) Previous arrests, convictions, conduct, or statements, indicating a propensity for violence and antipathy toward good order in Government.

(i) *Forwarding of recommendation.* Commanders who recommend the administrative discharge of any member where the authority to authorize or direct discharge therefor is reserved to the Commandant of the Marine Corps, or the Secretary of the Navy, shall forward such recommendation to the Commandant of the Marine Corps together with all available information sufficient to permit the Commandant of the Marine Corps, or the Secretary of the Navy, to authorize or direct the member's retention, his retention on probation, or his discharge. Should the recommended discharge be based upon an investigative report, other than an Office of Naval Intelligence (ONI) investigative report, the original investigative report, or a certified true copy thereof, will be forwarded as a supporting document. If the recommended discharge is based upon an ONI report, an identifying reference thereto shall be contained in the recommendation for discharge.

(j) *Civil restraint.* When a commanding officer desires that a respondent be retained in the service and civil restraint (including probationary reporting) exists, civil authorities will be requested to terminate or suspend such restraint for the duration of the respondent's enlistment or induction. This action will be taken or caused to be taken by the respondent's commanding officer who recommends his retention. Where such action has not been taken previously, the Discharge Authority directing the respondent's retention will take or cause such action to be taken. In the event that civil authorities refuse to terminate or suspend the respondent's civil restraint, and persist in such refusal even after appropriate liaison with such civil authorities has been effected, the following action will be taken by Discharge Authorities other than the Commandant of the Marine Corps or the Secretary of the Navy:

(1) Where the Discharge Authority determines that the civil restraint will or may materially interfere with the respondent's military duties, or in cases where the Discharge Authority desires that such determination be made by the Commandant of the Marine Corps, the entire case, including all relevant documents and the Discharge Authority's appropriate recommendation, will be submitted to the Commandant of the Marine Corps (Code DM) for final decision in the member's case.

(2) Where the local Discharge Authority determines that the civil restraint will clearly not materially interfere with the respondent's military duties, the respondent may be retained and neither the case nor a report thereof need be forwarded to the Commandant of the Marine Corps, except as may be required by § 730.54(h) or § 730.65(d).

(k) *Submission of request.* The submission of a request by a member for a discharge for the good of the service, or for the convenience of the Government, or for the member's own convenience, or for dependency or hardship, shall in no case prevent or preclude a Discharge Authority from dis-

approving such request, or holding it in abeyance, and referring the member to an administrative discharge board, or to a court-martial, or from taking any appropriate punitive, nonjudicial, or administrative action in the member's case.

(l) *Commandant of the Marine Corps as Discharge Authority.* Pursuant to the provisions of this subpart, the appropriate Discharge Authority for the administrative discharge of members because of the procurement of a fraudulent enlistment, induction, or period of active service, through any deliberate material misrepresentation, omission, or concealment of preservice homosexual act(s) or tendencies (§ 730.67(b)(2)(vi)), sexual perversion (§ 730.66(b)(1)), or homosexual or other aberrant sexual tendencies (§ 730.65(a)(7)), is the Commandant of the Marine Corps. In transmitting cases of this nature to the Commandant of the Marine Corps for disposition, the forwarding endorsements will, in addition to the other matters required by this subpart, contain:

(1) As full an identification as possible of all persons involved with, or implicated in, the member's act(s), omissions, conduct, or tendencies, and

(2) Where all military members involved are under the command of the reporting commander, or of the commanders in the chain of command forwarding the report, the report, or the endorsements thereon, shall contain a statement of the action taken or contemplated with regard to all persons involved, and a recommendation as to whether the execution of a discharge should be delayed in any particular member's case pending the processing of other personnel involved. Where individuals from other commands are implicated, the Commandant of the Marine Corps will assume cognizance of these other individuals and will direct action to accomplish the processing of these cases.

(m) *Relation to disciplinary status.* A recommendation for administrative discharge may be made and forwarded, and a member may be administratively discharged, notwithstanding the fact that the member may be in a disciplinary status, i.e., whether under investigation, under pretrial restraint, pending trial by a court-martial or civil court, pending the imposition of nonjudicial punishment, serving a sentence imposed by a court-martial or civil court, performing nonjudicial punishment, or in a probationary status as a result of the suspension of the unexecuted portion of any nonjudicial punishment or sentence by a court-martial or civil court. However, unless the member is to be required to serve the unexecuted portion of his sentence by court-martial which has been approved and ordered executed, or unless he is to be discharged with an honorable discharge when he is under the suspended sentence of a court-martial, the Discharge Authority will take, or request appropriate authority to take, action to remit any portion of the sentence which will remain unexecuted at the time of the member's administrative discharge. See Manual for Courts-Martial, 1951, paragraph 97a; U.S. v. Green, 10 USCMA 561, 28 CMR 127; and U.S. v. Speller, 8 USCMA 363, 24 CMR 173.

(n) *"Accuser" status to be avoided.* In order to obviate difficulties which may otherwise arise when a recommended administrative discharge is not approved and disciplinary action is subsequently taken against the member, the action or decision to forward a recommendation for an administrative discharge, or to authorize or direct the execution of an administrative discharge when a member is in a disciplinary status, including the preliminary determination to administratively discharge a member rather than to try him by court-martial, should be taken or made in such a manner that the commander does not thereby become an accuser within the meaning of Uniform Code of Military Justice, article 1(9).

(o) *Authority.* Except as otherwise provided in this subpart, the Discharge Authority may authorize or direct a member's administrative discharge:

(1) Even though the member withdraws or repudiates an admission or confession of the alleged act(s) or omission(s) upon which, wholly or in part the discharge is based, and even though the confession is the sole or

primary evidence upon which the discharge is based; or

(2) Even though a member withdraws a previously submitted request for discharge for the good of the service (see § 730.70(d)); or

(3) Even though the discharge is based solely or in part upon a final conviction(s) by civil authorities (see § 730.67(b)(3)); or

(4) Even though the discharge is based solely or in part upon a finally approved nonjudicial punishment(s); or

(5) Even though the discharge is based solely or in part upon a final conviction(s) by court-martial (see § 730.54(e)(1)); or

(6) Even though the discharge is based solely or in part upon act(s) or omission(s) for which the member was tried and acquitted by court-martial or civil court (see § 730.54(e)(2)); or

(7) Even though the member is in a probationary status as a result of the suspension of a previously approved administrative discharge (see § 730.75 (d) and (h)); or

(8) In lieu of either trial by court-martial, or the imposition of nonjudicial punishment, or despite the existence of pending but untried charges by civil authorities (see § 730.51(m)).

(p) *Authority of the Commandant of the Marine Corps.* Personnel who have been the subject of a completed Background Investigation (as defined in Article 1503.3 of OPNAV Instruction 5510.1C, the Department of the Navy Security Manual for Classified Information) will not be administratively discharged under the provisions of § 730.66 or § 730.67, or discharged with a punitive discharge pursuant to the sentence of a court-martial (including such discharge resulting from vacation of a suspension), without the permission of the Commandant of the Marine Corps. In these cases, the Commandant of the Marine Corps (Code DM) will be advised of the commander's intention to discharge the member, the basis for the contemplated discharge, and the character of the contemplated discharge. Upon receipt of this information, the Commandant will provide appropriate instructions. The provisions of this paragraph apply even though the individual's security clearance has been terminated for cause prior to the date of his contemplated discharge. The provisions of this paragraph do not affect the authority of appropriate reviewing authorities of courts-martial to approve and order executed an administrative discharge. However, the actual execution of such discharges will not be effected without compliance with this paragraph.

(q) *Evidence of possible physical disability.* Where a commanding officer or officer in charge recommends that a member be administratively discharged for any reason, or makes a report of the member's misconduct pursuant to the provisions of § 730.67, the recommendation or report will include all the evidence available to such officer relating to the existence or possible existence of a physical disability or mental infirmity (including character and behavior disorders) on the part of the member concerned. This is essential to permit the appropriate Discharge Authority to evaluate such evidence, along with all the other relevant factors present in the case, in order to determine:

(1) Whether the discharge, if any, should be that recommended, or, in lieu thereof, a discharge based upon the physical disability or mental infirmity. See §§ 730.60, 730.65(a) (3) and (5), and 730.105; also part J of chapter 13 of the Marine Corps Personnel Manual.

(2) The extenuating or mitigating effect of the physical disability or mental infirmity on the member's acts or omissions upon which the recommendation for discharge is based.

(r) *Powers of discharge authority.* Subject to the other provisions of this subpart, and except where an administrative discharge board has considered a member's case and made recommendations with regard thereto, the appropriate Discharge Authority may disapprove any recommendations made by lower authority or authorities as to the member's retention in the service or discharge therefrom, and as to the type and character of discharge recommended, or the general and/or specific basis therefor. For example, where a commanding officer makes a report of a member's miscon-

duct pursuant to § 730.67, but recommends the member's retention in the service, and the member's case is not considered by an administrative discharge board because of the member's waiver of all his rights with respect thereto, the Discharge Authority may disapprove the commanding officer's recommendation for retention and direct the member's discharge with an undesirable discharge. See also §§ 730.50(e) (13) and (14) and 730.66(i)(2).

(s) *Referral to the Commandant of the Marine Corps.* In any case where the convening authority of an administrative discharge board, or a Discharge Authority, considers that there is a question as to the proper or appropriate disposition of a particular case, the matter may be referred to the Commandant of the Marine Corps (Code DM) for instructions or disposition, as appropriate.

(t) *Separation of recruits prior to completion of recruit training.* Except as otherwise provided by this subpart, or by higher authority, commanding generals of Marine Corps Recruit Depots or their temporary successors in command, will determine the type of discharge to be issued to a recruit who is administratively discharged prior to completion of recruit training. The recommendations of boards convened in connection with separation of recruits may be considered in making the determination in each case. BUMED Instruction 1910.1 series contains applicable provisions.

(u) *Notification of parents, spouse, or guardian in certain types of cases.* The Marine Corps Personnel Manual, paragraph 7006, contains provisions for the notification to be given parents, spouses, or guardians of members who are to be discharged prior to expiration of their enlistment.

(1 CFR 18.14, and Part 21, Subpart B)

[31 FR 16528, Dec. 28, 1966, as amended at 45 FR 8600, Feb. 8, 1980]

§ 730.52 Honorable discharge.

(a) *Separation with honor.* An honorable discharge is a separation from the service with honor.

(1) Issuance of an honorable discharge will normally be conditioned upon proper military behavior and proficient performance of duty, with due consideration for the member's age, length of service, grade, and general aptitude. However, see §§ 730.51(b), (g), and (q), 730.52(a)(3), (b) to (e), and 730.73(i). A member will not necessarily be denied an honorable discharge solely by reason of a specific number of convictions by courts-martial or punishments under article 15 of the Uniform Code of Military Justice during his current enlistment or period of obligated service, including voluntary or involuntary extensions thereof. Such convictions or nonjudicial punishments will, nevertheless, be considered and weighed in relation to all other relevant aspects of the member's behavior and performance of duty.

(2) In the case of a member serving in the grade of corporal and below, prima facie evidence of proper military behavior and performance of duty justifying the issuance of an honorable discharge will be the possession of a minimum final average conduct mark of 4.0 and a minimum final average duty proficiency mark of 3.0. In the case of a member serving in the grade of sergeant or above, the determination as to what constitutes proper military behavior and proficient performance of duty of the member concerned justifying the issuance of an honorable discharge will be made by the Discharge Authority from the evaluation of the entire character of the member's current period of service.

(3) A member may be eligible for an honorable discharge for one of the following reasons:

(i) Expiration of enlistment or fulfillment of service obligation, as applicable

(ii) Convenience of the Government

(iii) Own convenience

(iv) Dependency or hardship

(v) Minority

(vi) Disability

(vii) Unsuitability

(viii) Eligibility for an undesirable discharge under any of the applicable provisions of this subpart, with a determination by the Discharge Authority, or higher authority, that the member should be discharged with an

honorable discharge, as warranted by the member's military record.

(b) *Awards.* A member who has been awarded one of the following listed decorations during his current enlistment, period of obligated service, or any extension thereof, may, where otherwise ineligible therefor, be awarded an honorable discharge; Medal of Honor; Navy Cross; Distinguished Service Medal; Silver Star Medal; Legion of Merit; Distinguished Flying Cross; Navy and Marine Corps Medal; Bronze Star Medal; Commendation Ribbon; Gold Life Saving Medal; Silver Life Saving Medal; or any decoration of the other Armed Forces of the United States comparable to the decorations listed in this paragraph. Each case will be determined on the basis of the member's entire military record.

(c) *Physical disability.* A member who is discharged by reason of physical disability incurred in line of duty, may where otherwise ineligible, be given an honorable discharge. Each case will be determined on the basis of the member's entire military record.

(d) *Report to Commandant of the Marine Corps.* When doubt exists in a particular case as to whether an honorable or general discharge is appropriate, a full report of the circumstances, with appropriate recommendations from the member's commander, may be forwarded to the Commandant of the Marine Corps (Code DMB) for determination.

(e) *Report to proper Discharge Authority.* In those cases where a member may be issued either an honorable or general discharge upon expiration of enlistment or release from active duty, and the member's commanding officer, officer in charge, or higher authority, is of the opinion that the member concerned should be issued a type of discharge different from that indicated by his conduct and duty proficiency markings, as set forth in §§ 730.52(a)(2) or 730.53(a)(1), a full report of the circumstances, with appropriate recommendations, shall be forwarded for decision to the proper Discharge Authority, to wit: The Commandant of the Marine Corps (Code DM) or the Marine commander exercising general court-martial jurisdiction over the member. These exceptional cases are limited to those wherein an honorable discharge is recommended in lieu of a general discharge, or a general discharge is recommended in lieu of an honorable discharge. When a member is to be transferred prior to effecting this discharge, these recommendations should be made prior to the member's transfer. A copy of the commanding officer's initial recommendations, together with the decision of the Marine commander exercising general court-martial jurisdiction over the member prior to his transfer, or a copy of the recommendations forwarded to the Commandant of the Marine Corps (Code DM), will be forwarded to the activity to which the member is to be transferred and at which his discharge will be effected.

§ 730.53 General discharge.

(a) *Separation under honorable conditions.* A general discharge is a separation from the service under honorable conditions. Issuance of a general discharge is conditioned upon:

(1) A military record which is, under the provisions of this subpart, not sufficiently meritorious to warrant an honorable discharge (see § 730.52(a)(1) and (2).

(2) Eligibility for discharge by virtue of one of the reasons listed in § 730.52(a)(3) (i) to (vii), or eligibility for an undesirable discharge under any of the applicable provisions of this subpart, with a determination by the Discharge Authority, or higher authority, that the member should be discharged with a general discharge, as warranted by the member's military record.

(b) *Awards.* A member who has been awarded one of the decorations listed in § 730.52(b) during his current enlistment, period of obligated service, or any extension thereof, may, where otherwise ineligible therefor, be awarded a general discharge.

(c) *Conduct marks.* Where, in the case of a corporal or below, a member is being considered for discharge with a general discharge because his military record is not considered sufficiently meritorious to warrant an hon-

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orable discharge because of average conduct marks below those set forth in § 730.52(a)(2), such marks should be clearly supported by entries on pages 11, 12, or 13 of the member's service record book. When such marks are not so supported, or where the provisions of § 730.52(b) or (c) are applicable, consideration should be given to awarding the member an honorable discharge.

(d) *Report to Commandant of the Marine Corps.* When doubt exists in a particular case as to whether an honorable or general discharge is appropriate, the provisions of § 730.52(d) apply.

(e) *Report to proper Discharge Authority.* Where a member may be issued either an honorable or general discharge upon expiration of enlistment or release from active duty, and the member's commanding officer, officer in charge, or higher authority is of the opinion that the member concerned should be issued a type of discharge different from that indicated by his conduct and duty proficiency markings, as set forth in § 730.52(a)(2) or § 730.53(a)(1), the provisions of § 730.52(e) apply.

§ 730.54 Undesirable discharge.

(a) *Separation under conditions other than honorable.* An undesirable discharge is an administrative separation from the service under conditions other than honorable. An undesirable discharge may be issued for any of the following reasons:

(1) Security.

(2) Unfitness.

(3) Misconduct.

(4) Request for discharge for the good of the service.

(b) *Conditions.* Except as provided in § 730.54(c), a member shall not be administratively discharged under conditions other than honorable unless:

(1) He is afforded the right to present his case before an administrative discharge board with the advice and assistance of counsel, and

(2) Such discharge is supported by approved findings of an administrative discharge board, and by an approved recommendation of an administrative discharge board for an undesirable discharge.

(c) *Action by administrative discharge board not required in certain cases.* Where appropriate, an undesirable discharge may be issued without action by an administrative discharge board in any of the following cases:

(1) Where the member is beyond military control by reason of continuous established unauthorized absence of more than 1 year, in which event the member may be issued an undesirable discharge, in absentia, in accordance with the procedures prescribed elsewhere in this subpart. See § 730.72(a)(2)(ii). The Discharge Authority in these cases will normally be the Commandant of the Marine Corps. Separation of members of the Marine Corps Reserve will be subject to the limitations of Title 10, U.S. Code 1163.

(2) Where the member requests discharge for the good of the service in accordance with the provisions of § 730.70.

(3) Where the member waives his right to administrative discharge board action in accordance with the provisions of § 730.72.

(d) *More favorable discharge.* In any case in which an undesirable discharge is authorized by the provision of this subpart, a member may, nevertheless, be awarded an honorable or general discharge, as appropriate, if:

(1) During his current enlistment or period of obligated service, or any voluntary or involuntary extension thereof, or during any prior period of service, he has been awarded one or more of the personal decorations listed in § 730.52(b) or

(2) Such action is otherwise warranted by the particular circumstances of the member's case, as determined by the Discharge Authority, or higher authority. Whenever a member's commanding officer or officer in charge considers that a member should be discharged administratively, but that the Discharge Authority, or higher authority, should give consideration to a discharge more favorable than the undesirable discharge which could be awarded under the circumstances, the commanding officer or officer in charge may make such recommendation to the Discharge Authority. This

recommendation will include any alternate recommended general basis for the discharge (i.e. other than by reason of unfitness, security, misconduct, or the member's request for discharge for the good of the service); any alternate recommended specific basis for the discharge (e.g. financial irresponsibility in lieu of an established pattern showing dishonorable failure to pay just debts), and the alternate character of the discharge (i.e. an honorable or general discharge), together with a full development of the commanding officer's or officer in charge's reasons for making such recommendation.

(e) *Limitations.* An undesirable discharge will not be based solely upon:

(1) An offense or offenses for which the member has been tried and convicted by court-martial unless such discharge is with the express approval of the Secretary of the Navy. Cases falling within this category will be submitted to the Commandant of the Marine Corps (Code DK) for submission to the Secretary of the Navy. However, this provision is not applicable, and the Secretary's approval is not required, if the discharge under conditions other than honorable is based upon the member's overall conduct record, even though such record may include one or more convictions by court-martial. Where the Discharge Authority is in doubt as to the applicability of the provisions of this subparagraph, the entire case may be submitted to the Commandant of the Marine Corps (Code DK), for advice or disposition.

(2) Acts or omissions for which the member has been previously tried by court-martial or by civil court resulting in acquittal or action having the effect thereof, except where such acquittal or equivalent disposition is based on a legal technicality not going to the merits. Legal technicalities not going to the merits of a case include but are not limited to, the following: Mistrials; motions to bar trial or dismiss charges which are granted because of: The running of the statute of limitations, former punishment, former jeopardy, lack of speedy trial, withdrawal of charges or nolle prosequi before jeopardy attaches, failure of the charges to allege an offense, pardon (as an act of executive clemency), constructive condonation of desertion, or lack of jurisdiction; and motions for appropriate relief (Manual for Courts-Martial, 1951, paragraph 69) and equivalent motions made in civil court resulting in the termination of proceedings before the attachment of jeopardy.

(i) Where charges are dismissed because of a promise or grant of immunity (Manual for Courts-Martial, 1951, paragraph 68h), such action will be considered, for the purposes of this subpart, as a legal technicality not going to the merits only when the promise or grant, by its terms, specifically excludes administrative discharge proceedings from within the scope of its immunity.

(ii) Acquittals or equivalent dispositions do not include those cases tried by civil court wherein local law, custom, or procedure permit charges to be dismissed or expunged from civil records after the payment of a fine, the successful completion of jail or penitentiary sentences, or the successful completion of periods of probation. See § 730.67(b)(3)(iii).

(f) *Pertinent information.* When a commander or higher authority is considering the case of a member of the grade of sergeant or above for discharge with an undesirable discharge, he may, where he considers it to be appropriate, request from the Commandant of the Marine Corps (Code DG) copies of the member's fitness reports, and any other pertinent information which may be related to the reasons for discharge, or the type of discharge to be issued.

(g) *Waiver of rights.* In the case of a recommendation for an undesirable discharge wherein the member waives all of his rights, the Discharge Authority may nevertheless disapprove the waiver and refer the case of an administrative discharge board, directing that the member be accorded his applicable rights thereafter; or he may direct the member's retention; or he may direct the member's discharge by reason of security, misconduct, or unfitness, specifying the type of discharge certificate to be issued. For the various actions which may be taken by

the Discharge Authority upon a request for discharge for the good of the service, see § 730.70.

(h) *Review.* When final action has been taken on any report of misconduct, or recommendation for the discharge of a member by reason of unfitness, or upon any request for discharge for the good of the service (§§ 730.66, 730.67 and 730.70), the Discharge Authority will forward all papers, or copies thereof, pertaining to the case to the Commandant of the Marine Corps (Code DK) for review.

§ 730.55 Bad conduct discharge.

A bad conduct discharge is a punitive separation from the service under conditions other than honorable. It may be effected only as a result of the finally approved sentence of a general or special court-martial.

§ 730.56 Dishonorable discharge.

A dishonorable discharge is a punitive separation from the service under dishonorable conditions. It may be effected only as a result of the finally approved sentence of a general court-martial.

§ 730.57 Table of matters relating to discharges or releases from active duty.

The following table of matters relating to discharges or releases from active duty is furnished as a ready reference. The entries in the table are to be considered as a guide only. Pertinent references should be consulted for detailed instructions and exceptions under certain conditions.

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[2] See § 730.107.
[3] See § 733.109 and Navy Comptroller Manual, par. 044180.
[4] See § 730.117.
[5] See paragraph 14001 of the Marine Corps Personnel Manual and Navy Comptroller Manual, par. 044070–4.
[6] Unless directed by CMC or unless marriage is the basis in the case of a woman member.
[7] Unless resulting from misconduct or willful neglect or unless incurred during a period of unauthorized absence.
[8] When directed by CMC.

§ 730.58 Discharge for reason of expiration of enlistment or fulfillment of service obligation.

Commanders are authorized to discharge enlisted personnel upon normal date of expiration of enlistment, extension of enlistment, or period of induction. The normal date of expiration of enlistment for any enlistment is the date of the month immediately preceding the appropriate anniversary of the date of enlistment as adjusted for the purpose of making up any time lost from the enlistment, extension of enlistment or period of induction. Discharge of enlisted personnel for reason of fulfillment of service obligation will be accomplished in accordance with the provisions of §§ 730.150 to 730.164. Section 730.151 will be cited as the authority for discharge.

§ 730.59 Discharges at sea.

Discharges will not be executed while an enlisted person is attached to a Marine Detachment Afloat, except for the purpose of immediate reenlistment, or accepting a commissioned or warrant grade.

§ 730.60 Discharge for physical disability.

The Commandant of the Marine Corps, and commanders, when specifically authorized by separate directive, may direct or effect discharge for physical disability when, as a result of medical findings, an individual has been found physically unfit to perform the duties of his grade. Discharge for reason of physical disability is given only as the result of an individual's appearance before a physical evaluation board or a medical board. For further instructions, see § 730.105 and paragraph 13305 and Part J of Chapter 13 of the Marine Corps Personnel Manual.

§ 730.61 Discharge or release from active duty for convenience of the Government.

(a) *Reasons.* The Secretary of the Navy, or the Commandant of the Marine Corps, may authorize or direct the discharge or release from active duty of a member for the convenience of the Government for any one of the following reasons:

(1) General demobilization, reduction in authorized strength of the Marine Corps or Marine Corps Reserve, or by an order applicable to all members of a class of personnel specified in the order.

(2) To accept a commission or appointment in the Marine Corps, Marine Corps Reserve, or in another branch of the Armed Forces, for active duty only.

(3) For reasons of national health, safety, or interest, only when recommended by a Government agency authorized to make such determination and recommendation. Cases of this nature will not normally come to the attention of individual commanders, however, when they do, a prompt report thereof, containing all available information, shall be made to the Commandant of the Marine Corps (Code DM).

(4) Erroneous induction (when so stated by the Office of the Director of Selective Service), or erroneous enlistment. Any case coming to a commander's attention which purports to be of this nature shall be investigated, and a complete report shall be made promptly to the Commandant of the Marine Corps (Code DM).

(5) For such other good and sufficient reasons, not elsewhere listed in this subpart, which are specified and published by the Secretary of the Navy in SECNAV Instruction 1910.3, or revisions thereof.

(6) For the purpose of holding public office, as set forth in subparagraph 13050.6 of the Marine Corps Personnel Manual.

(7) When directed by the Secretary of the Navy. See § 41.6(b)(11) of this title.

(b) *Erroneous enlistment of recruits.* Commanding generals of Marine Corps recruit depots may authorize or direct the administrative separation of recruits for the convenience of the Government, citing the authority in paragraph (a)(4) of this section (i.e. erroneous enlistment or induction), under the following conditions:

(1) Upon determination, in accordance with existing regulations, that the recruit failed to meet the required physical standards when accepted for enlistment or induction; or

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TABLE OF MATTERS RELATING TO DISCHARGES

Reason for discharge	Authority (sec.)	Conditions affecting the type and character of discharger (sec.)	Character of discharge	DD Form	Mileage [1]	Transportation in kind [1]	Issue civilian clothing [2]	Cash allowance [3]	Retain and wear uniform home [4]	Reenlistment bonus recoupment [5]
Expiration of enlistment or fulfillment of Service obligation, as applicable.	730.58 or 730.150 or 730.151.	730.51, 730.52, 730.162(a).	Honorable or Under hon. conditions.	DD 256-MC ..... or DD 257-MC	Yes	No	No	No	Yes	No.
Convenience of the Government.	730.61 or 730.150 or 730.153 or 730.154-730.159 or 730.164.	730.51, 730.52, 730.162(a), 730.126, 730.152(a)(2), 730.163. 730.51, 730.53, 730.162(a), 730.126, 730.152(a)(2), 730.163.	Honorable or Under hon. conditions.	DD 256-MC ..... or DD 257-MC	do	do	do	do	do	Do. [6]
Own convenience	730.62 or 730.150 or 730.127 or 730.152 or 730.164.	730.51, 730.52, 730.162(a), 730.126, 730.15, 730.163. 730.51, 730.53, 730.162(a) 730.126, 730.152, 730.163.	Honorable or Under hon. conditions.	DD 256-MC ..... or DD 257-MC	do	do	do	do	do	Yes.
Dependency or hardship.	730.63	730.51,	Honorable	DD 256-MC						

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TABLE OF MATTERS RELATING TO DISCHARGES—Continued

Reason for discharge	Authority (sec.)	Conditions affecting the type and character of discharger (sec.)	Character of discharge	DD Form	Mileage [1]	Transportation in kind [1]	Issue civilian clothing [2]	Cash allowance [3]	Retain and wear uniform home [4]	Reenlistment bonus recoupment [5]
		730.52, 730.162(a), 730.126.	or		Yes	No	No	No	Yes	No.
		730.51, 730.53, 730.162(a), 730.126.	Under hon. conditions.	DD 257-MC						
Minority	730.64.	730.51, 730.52, 730.162(a), 730.124.	Honorable or	DD 256-MC	do	do	do	do	do	Do.
		730.51, 730.53, 730.162(a), 730.124.	Under hon. conditions	DD 257-MC						
Disability	730.60.	730.51, 730.52, 730.162(a).	Honorable or	DD 256-MC	do	do	do	do	do	Do. [7]
		730.51, 730.53, 730.162(a).	Under hon. conditions	DD 257-MC						
Unsuitability	730.65.	730.51, 730.52, 730.162(a).	Honorable or	DD 256-MC	do	do	Yes	do	No	Do.
		730.51, 730.53, 730.162(a).	Under hon. conditions	DD 257-MC						
Security	730.59.	730.51, 730.52, 730.162(a).	Honorable or	DD 256-MC	do	do	do	do	do	Yes. [8]
		730.51, 730.53, 730.162(a).	Under hon. conditions or	DD 257-MC	No	Yes	do	Yes	do	Do. [9]
		730.51, 730.54, 730.162(a).	Undesirable	DD 258-MC						
Unfitness	730.66.	730.51,	Honorable	DD 256-MC						

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TABLE OF MATTERS RELATING TO DISCHARGES—Continued

Reason for discharge	Authority (sec.)	Conditions affecting the type and character of discharger (sec.)	Character of discharge	DD Form	Mileage [1]	Transportation in kind [1]	Issue civilian clothing [2]	Cash allowance [3]	Retain and wear uniform home [4]	Reenlistment bonus recoupment [5]
		730.52, 730.162(a), 730.66.	or		Yes	No	do	No	do	Do. [6]
		730.51, 730.53, 730.162(a), 730.66.	Under hon. conditions or	DD 257-MC	No	Yes	do	Yes	do	Do.
		730.51.	Undesirable	DD 258-MC						
Misconduct	730.67.	730.51, 730.52, 730.162(a), 730.67.	Honorable or	DD 256-MC	Yes	No	do	No	do	Do. [6]
		730.51, 730.53, 730.162(a), 730.67.	Under hon. conditions or	DD 257-MC	No	Yes	do	Yes	do	Do.
		730.51, 730.54, 730.162(a), 730.67.	Undesirable	DD 258-MC						
Request for discharge for good of the service.	730.70.	730.51, 730.52, 730.162(a), 730.70.	Honorable or	DD 256-MC	Yes	No	do	No	do	Do.
		730.51, 730.53, 730.162(a), 730.70.	Under hon. conditions or	DD 257-MC	No	Yes	do	Yes	do	Do.
		730.51, 730.54, 730.162(a), 730.70.	Undesirable	DD 258-MC						
Sentence of court-martial.	730.68.	730.55.	Bad conduct or	DD 259-MC	do	do	do	do	do	D0.
		730.56.	Dishonorable	DD 260-MC						

[1] See § 730.103; Joint Travel Regulations Chap. 4, Part D, and Chap. 5, Part C; and Navy Travel Instructions, par. 4004.

(2) Upon enlistment the recruit concealed the fact he was married. See, however, § 730.67(b)(2)(v); or

(3) Upon enlistment the recruit concealed a juvenile or youthful offender record. See, however, § 730.67(b)(2)(ii).

(c) *Women members.* Commanders shall discharge for the convenience of the Government or, in the case of overseas commands, will transfer to the continental limits of the United States for discharge:

(1) A married enlisted woman at her written request provided she is not stationed at or sufficiently close to the duty station or residence of her husband to permit the maintenance of a joint residence and provided she meets all applicable conditions set forth below in this paragraph:

(i) A transfer request to the same or nearby duty station or place of residence of her husband has been submitted by the enlisted woman to the Commandant of the Marine Corps (Code DF) and has been denied.

(ii) The separation of husband and wife has exceeded 18 months.

(iii) The enlisted woman is not serving on an extension of enlistment or reenlistment entered into subsequent to marriage.

(iv) The enlisted woman has completed 24 months' service following completion of a service school if length of course was over 24 weeks.

(2) A woman member, whether married or unmarried, when it is established that such woman member:

(i) Is the parent by birth or adoption of a child under 18 years of age; or

(ii) Has personal custody of a child under 18 years of age; or

(iii) Is the stepparent of a child under 18 years of age and the child is within the household of the woman member for a consecutive period of more than 30 days a year; or

(iv) During her current enlistment or extension of enlistment, she has given birth to a living child.

(3) A woman member, whether married or unmarried, upon certification by a medical officer that she is pregnant, shall be discharged by her commander, for the convenience of the Government, or in the case of overseas commands, will be transferred to the continental United States for discharge. The character of the discharge certificate issued in these cases will be as warranted by the woman member's service record, regardless of her marital status. In the case of discharge for reason of the pregnancy of a woman member who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact of and reason for the discharge. If, as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman member's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for the convenience of the Government unless she requests, in writing, that she be retained in the service. In such latter case, the woman member may, at the discretion of her commander, be retained in the service, if she is found physically qualified for retention.

(d) *Obesity, low markings, and substandard behavior.* Administrative separation under the provisions of subparagraph 3b(3) through 3b(5), inclusive, of SECNAV Instruction 1910.3 or revisions thereof, will not normally be initiated until the member concerned has been given a reasonable opportunity to overcome his deficiencies. When it is determined by a commander that a member may come within the purview of these specific categories, the member shall be notified of his deficiencies, and he shall be counseled concerning them. A summary of all counseling measures taken in compliance with this subparagraph shall be recorded on page 11 of the member's service record book. If no improvement is forthcoming within a reasonable time, the member should then be recommended for the appropriate type of administrative discharge to the Commandant of the Marine Corps (Code DM) in accordance with paragraph (a)(5) of this section and § 730.51(i). Failure on the part of a member to receive or understand the counseling prescribed herein may be considered by the Secretary of the Navy or the Commandant of the Marine Corps, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of the discharge to be awarded. However,

in no event shall the failure of the member to receive or understand such counseling be considered a defense in an administrative discharge proceeding, or a bar thereto.

(e) *Immediate reenlistment and early separation.* Discharges for the convenience of the Government to permit immediate enlistment or reenlistment; to provide for early separation of members under various authorized programs and circumstances; and to provide for the discharge of conscientious objectors; shall be processed and effected in accordance with separate directives pertaining specifically to these categories of discharge.

§ 730.62 Discharge or release from active duty for own convenience.

(a) *Authorization.* The Commandant of the Marine Corps may authorize or direct the discharge or release from active duty of Marines for their own convenience. Requests for discharge will, as a policy, not be granted when submitted solely for the purpose of (1) entering another branch of the Armed Forces in an enlisted status, (2) accepting civil employment, or (3) accepting employment with other Government agencies in a civilian capacity.

(b) *Requests.* It is not desired to prevent personnel from applying for discharge for personal reasons; however, when it is evident after interview with the person concerned that his desire for separation is based on personal benefit, such as for one of the reasons stated above, he should be informed of the general policy and discouraged from submitting an official request for discharge for such reasons. If he still wishes to submit a request for discharge, he should be allowed to do so, in which case substantiating documents bearing on his particular case should be required of the applicant to accompany his request. In the case of aliens, the provisions of § 730.126 are applicable.

(c) *Forwarding of requests.* Requests for discharge or release from active duty for own convenience will, together with supporting documents and appropriate endorsements thereon, be submitted to the Commandant of the Marine Corps (Code DM).

(d) *No "purchase."* Discharge "by purchase" will not be authorized.

§ 730.63 Discharge or release from active duty for reason of dependency or hardship.

(a) *Authorization.* The Commandant of the Marine Corps and all Marine general officers in command may authorize and direct the discharge or release from active duty of enlisted personnel for dependency or hardship.

(b) *Requests.* Enlisted persons who desire to request discharge or release from active duty for dependency or hardship reasons shall be informed of these regulations and of the proper procedure to follow. It should be clearly explained to each applicant that submission of a request is no assurance that discharge or release will be authorized. Each request of this nature that is received shall be carefully and sympathetically considered and decided on its individual merits.

(c) *Limitations.* Undue hardship does not exist solely because of altered present or expected income or because the individual is separated from his family or must suffer the inconveniences normally incident to military service. Discharge or release from active duty by reason of hardship or dependency will not be authorized:

(1) For personal convenience alone.

(2) When the Marine requires medical treatment.

(3) Solely by reason of the pregnancy of the Marine's wife.

When a Marine who is in a disciplinary status submits an application for discharge or release from active duty by reason of dependency or hardship, see § 730.51(m).

(d) *Limitations on disapproval.* Discharge or release from active duty will not be disapproved under the provisions of this paragraph solely because:

(1) The enlisted person's services are needed in his organization, or

(2) He is indebted to the Government or to an individual.

(e) *Conditions.* Discharge or release from active duty for hardship or dependency will be warranted and may be authorized and directed when all the following conditions are met:

(1) Undue and genuine dependency or hardship exists.

(2) Dependency or hardship is not of a temporary nature.

(3) The Marine has made every reasonable effort to relieve the hardship by means of application for dependents allowance and voluntary contributions which have proven inadequate.

(4) Conditions have arisen or have been aggravated to an excessive degree since entry into the Marine Corps or entry on current tour or extended active duty. An example of a meritorious case is one in which the evidence shows that, as a result of the death or disability of a member of the Marine's family, his discharge or release from active duty is necessary for the support or care of a member or members of the family.

(5) Discharge or release from active duty will result in the elimination of, or will materially alleviate, the condition, and there are no means of alleviation readily available other than by such discharge.

(f) *Information required.* After explaining the regulations to an applicant, he will be permitted to submit a written application for discharge or release from active duty for dependency or hardship. Consideration and assistance will be given in the preparation of his request. Requests must be accompanied by at least two affidavits substantiating the dependency or hardship claim. Where practicable, one such affidavit should be from the dependent concerned. The request should contain the following additional information:

(1) Reason in full for request.

(2) Complete home address of dependent and applicant.

(3) Names and addresses of persons familiar with the situation.

(4) Statement as to marital status and date of marriage.

(5) Financial obligations; specific amounts and methods of contributions to dependent.

(6) Names, ages, occupations, and monthly incomes of members of the individual's family, if any; where applicable, income will include monetary benefits derived as the result of being beneficiary to a life insurance policy indicating whether payment was made in a lump-sum settlement or on a monthly basis, and the reasons why these members cannot provide the necessary care or support of the individual's family; and a statement that no members of the family have been omitted. Income, as used herein, will include wages, compensation of any type, Social Security benefits, interest and rental income from property and all other sources. If the request is based on financial conditions of specific members of the family, a statement of both monthly income and expenses of such members, and a statement of their assets and liabilities will be included. Assets will include a listing of all property, securities, and funds owned, indicating value, except clothing and household furnishings.

(7) If dependency is the result of death of a member of the Marine's family, occurring after his entrance into the service, a certificate or other valid proof of death should be furnished. If dependency or hardship is the result of disability of a member of the Marine's family, occurring after entrance in the service, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and probable duration.

(g) *Forwarding endorsement.* The immediate commander will forward such application by endorsement, including:

(1) A definite recommendation.

(2) A statement regarding service obligation.

(3) Status of any disciplinary action pending.

(4) Effective date, amount, and purpose of all allotments. If the applicant claims to be making cash contributions, he shall be required to produce substantiating evidence, such as money order receipts, etc.

(h) *Board.* The Marine commander who exercises special court-martial jurisdiction over the applicant will appoint a board, consisting of not less than three members, before whom the applicant will appear. This board shall consist entirely of military personnel. It will be the responsibility of the board to study and evaluate all available information, interview the appli-

cant, and make recommendations concerning the ultimate disposition of the case, including a recommendation as to whether an applicant who has a remaining service obligation should be discharged or released from active duty. The report of the board will include a brief summary of any factors considered in arriving at its recommendations which are not apparent in the application. The authority contained herein to appoint a board may be limited by higher authority when such action is deemed desirable; e.g., when one board may conveniently consider all cases in a larger command.

(i) *Action.* Upon receipt of a written request for discharge from the individual concerned, together with the supporting evidence outlined in paragraph (f) of this section, the Discharge Authority will take the following action:

(1) Carefully review the basis on which the request is made.

(2) Where specific supplemental information is needed to make a proper determination in the case, request such supplemental information from the American Red Cross pertaining to the application for discharge or release from active duty of an individual for hardship. Such requests will be restricted to those cases where specific supplemental information is needed to make a proper determination. If the member's request for discharge is disapproved after receipt of the American Red Cross report, include such report when forwarding the case to the Commandant of the Marine Corps (Code DMB).

(3) If the case has not previously been considered by a board, appoint a board to consider the case as outlined in paragraph (h) of this section.

(4) If the member's discharge or release from active duty is considered warranted, take final action on the application, regardless of the recommendations of the board. If the member is discharged, his application for discharge and all supporting papers will be forwarded, with his closed-out service records, to the Commandant of the Marine Corps (Code DGH). For those members released from active duty, rather than discharged, the member's application for discharge and all supporting papers will be forwarded to the Commandant of the Marine Corps (Code DGH), and the member's service records will be forwarded to the appropriate Reserve command in accordance with current directives.

(5) If the member's discharge or release from active duty is not considered warranted, forward his application for discharge with all supporting documents, together with a synopsis of the proceedings and recommendations of the local review board, to the Commandant of the Marine Corps (Code DMB) for review and final determination. The synopsis should contain any pertinent information not included in the member's application for discharge, or other supporting documents, that will aid in making a final determination in the case.

(6) If, at any time prior to final action, the applicant indicates a desire to withdraw his application for discharge, or indicates a desire not to be discharged even though his application is not formally withdrawn, the cognizant command will obtain a signed statement from the applicant to that effect. Such statement will be included with the member's application for discharge when forwarded to the Commandant of the Marine Corps (Code DMB), and an entry will be made on page 11 of the member's service record book showing that he signed such a statement.

(j) *Obligated service.* Discharge Authorities are further authorized to make the final determination, when the Marine concerned has a military obligation, as to whether conditions of hardship or dependency for which the individual is being considered may be expected to continue throughout the period of his obligated service. If it is considered that the hardship or dependency will continue throughout the period of his obligated service, the Marine may be discharged, in which case the period of obligated service is terminated. In case of doubt, the Marine will be transferred to or retained in the Marine Corps Reserve to complete his obligated service.

(k) *Procedures.* In effecting separations under this authority, the procedures set forth in this paragraph will be followed:

(1) If the individual to be separated has a home of record in the continental United States:

(i) Commands located in the United States will effect the separation locally.

(ii) Commands located outside the United States will transfer the individual concerned to the nearest Marine Corps activity in the United States for separation.

(2) If the individual to be separated is entitled to and elects transportation to a point outside the United States upon separation, he will be transferred to the Marine Corps activity nearest to the point to which transportation is authorized.

(l) *Confidential nature.* Any information concerning the private affairs of Marines or their families shall be treated as confidential, and shall not be disclosed to persons other than in connection with their official duties, nor will the source of such information be disclosed.

(m) *Related course of action.* In the event that the applicant's request for discharge or release from active duty for reason of dependency or hardship does not meet the criteria specified in this section, the Discharge Authority may give consideration to the applicant's request under the provisions of paragraph 3b(7) of SECNAV Instruction 1910.3, or revisions thereof.

§ 730.64 Discharge for reason of minority.

(a) *Authority.* Subject to the restrictions contained in paragraph (c) of this section, the Commandant of the Marine Corps, and all Marine Corps general officers in command may direct the separation of a member by reason of minority. Oversea commands will transfer personnel to the continental United States for such discharge.

(b) *Report.* In cases involving the possible discharge of a member by reason of minority, organizations not in the chain of command of a Marine Corps general officer in command will forward a report of the case to the Commandant of the Marine Corps (Code DM), including therein the evidence prescribed in paragraph (e)(1) of this section; a definite recommendation as to the desirability for retention of the member; and a statement from the minor concerned, if, pursuant to the provisions of article 31 of the Uniform Code of Military Justice, the minor desires to submit a statement. If the minor is not considered desirable for retention, he shall be retained at or transferred to a shore station within the continental United States, and the Commandant of the Marine Corps (Code DM) will be so advised.

(c) *Restrictions.* Release of a member from military control by voidance of enlistment, or the discharge of a member by reason of minority, may be effected by the officials described in paragraph (a) of this section, subject to the following restrictions:

(1) Voidance of enlistment will not be effected unless authorized or directed by the Commandant of the Marine Corps. Where a member has apparently been enlisted in the Marine Corps in violation of the prohibitions relative to age contained in 10 U.S.C. 5532 (a male under the age of 14 years or a female under the age of 18 years), the case shall be immediately reported to the Commandant of the Marine Corps (Code DG). After investigation of the facts, and subject to any provision of law pertinent thereto, the Commandant of the Marine Corps will direct the action to be taken and the disposition of the member concerned. See § 730.124.

(2) Male enlisted members of the Regular Marine Corps and Marine Corps Reserve.

(i) If under a verified age of 17 years, the minor will be released from military control by voidance of enlistment, or discharge, regardless of whether his enlistment was effected with the consent of his custodial parents or legal guardians and regardless of the absence of an application for the minor's release from his custodial parents or legal guardians.

(ii) If it has been verified that the minor has passed his 17th birthday but not his 18th birthday, he will be discharged, provided that his enlistment was made without the proper consent of his custodial parents or legal guardians and provided that an application for the minor's release has been made by his custodial parents or legal guardians and such application

has been received by his command, the Commandant of the Marine Corps, or by any other agency of the Department of the Navy, within 90 days from the date of the minor's enlistment.

(iii) When it has been verified that the minor has passed his 18th birthday he will be retained, if he is otherwise qualified, regardless of the failure of his custodial parents or legal guardians to have consented to his enlistment and regardless of any application for the minor's release made by his custodial parents or legal guardians.

(3) Inductees. If the minor is under 18 years and 6 months of age, when verified, he will be discharged, regardless of the absence of an application for the minor's release from his custodial parents or legal guardians, unless, pursuant to Selective Service regulations, the minor, after attaining the age of 17 years, volunteered for induction with the written consent of his custodial parents or legal guardians.

(4) Female enlisted members of the Regular Marine Corps or Marine Corps Reserve.

(i) If enlisted and under 18 years of age, the minor will be released from military control by voidance of enlistment, or discharge, regardless of whether her enlistment was effected with the consent of her custodial parents or legal guardians and regardless of the absence of an application for her release from her custodial parents or legal guardians.

(ii) If enlisted without the proper consent of her custodial parents or legal guardians, and she has passed her 18th birthday, but not her 21st birthday, when verified, she will be discharged, provided that an application for her release has been made by her custodial parents or legal guardians and such application has been received by her command, or the Commandant of the Marine Corps, or by any other agency of the Department of the Navy, within 90 days from the date of the minor's enlistment.

(d) *Minimum ages.* The statutory and administrative minimum ages for enlistment are as follows:

	Statutory	Administrative
Regular Marine Corps:		
Men	14	17
Women	18	18
Marine Corps Reserve:		
Men	14	17
Women	18	18

The release from military control, as determined by the Commandant of the Marine Corps (Code DG), by voidance of enlistment, or discharge, of any enlisted member who is determined to be under the statutory minimum age for enlistment is mandatory, and a request of the custodial parents or legal guardians for the minor's release is not required. Any request by custodial parents or legal guardians for the release of a minor who was enlisted while under the minimum statutory age limit, and who remained in the service after reaching the minimum statutory or administrative age for enlistment, will be processed in accordance with paragraph (c) of this section where appropriate.

(e) *Prompt action.* In any case where it becomes apparent, or it is alleged, that there is a discrepancy in the age or name in a minor's enlistment contract, or when the validity of the consent of custodial parents or legal guardians for the minor's enlistment is questioned, prompt action shall be taken by the minor's command to ascertain the facts. Regardless of whether or not such facts provide a basis for the minor's release from military control by voidance of enlistment, or discharge, the minor's local service records will be corrected, where appropriate, and a complete report of the matter will be made to the Commandant of the Marine Corps (Code DG).

(1) The evidence described below will be acceptable for establishing proof of a minor's age and for the correction of a minor's service records, where appropriate (see also paragraph 15057 of the Marine Corps Personnel Manual):

(i) A certified copy of the minor's birth certificate showing the date of the minor's birth, and the date his birth was recorded. To be acceptable, the date his birth was recorded must

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have been previous to the minor's enlistment.

(ii) A certified copy of the minor's baptismal certificate, or other church record, showing the minor's age or date of birth.

(iii) A certified extract from a school census record.

(iv) A certified hospital record of the minor's birth.

(v) A certified census enumeration extract.

(2) Any difference in the minor's name contained in the evidence described above, and the name under which the minor enlisted or was inducted, must be clarified by public record or affidavits of two disinterested and credible persons testifying from their own knowledge as to the identity of the minor concerned.

(f) *Written consent.* Written consent shall be obtained from the custodial parents or legal guardians in all cases of enlistment of male minors under 18 years of age, and of female minors under 21 years of age. Written consent will also be obtained from the custodial parents or legal guardians in all cases of an extension of enlistment of male minors under 18 years of age, and of female minors under 21 years of age. See paragraph 2206.6 of the Marine Corps Personnel Manual.

(g) *Misrepresentation of age.* The enlistment of a minor with false representation as to age, or without proper consent from his parents or legal guardians, will not, in itself, be considered as a fraudulent enlistment. See § 730.67(b)(2).

(h) *Notification of next of kin.* The commander effecting a minority discharge shall notify or cause to be notified the minor's next of kin of the type of discharge and, in general terms, the reason for discharge. Care and discretion shall be exercised in phrasing the notification in order that the reason for discharge may not be construed by the person concerned as derogatory to the minor or to reflect adversely on his character.

(i) *Service obligation not affected.* A member whose enlistment or induction is terminated by reason of minority, including voidance of enlistment, shall not, as a result of such enlistment or induction, be considered to have acquired a period of obligated service under law, nor is service under any enlistment or induction which was so terminated creditable toward the fulfillment of any subsequently acquired service obligation.

§ 730.65 Discharge for reason of unsuitability.

(a) *Authorization.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction, may authorize or direct the retention in the service or discharge of members recommended for discharge by reason of unsuitability, except that all cases involving homosexual or other aberrant sexual tendencies as the specific basis for the proposed discharge will be referred to the Commandant of the Marine Corps (Code DK) for disposition. Where there is evidence of homosexual or other aberrant sexual tendencies present in the case, but the local Discharge Authority determines that the specific basis for the proposed discharge should be one of the bases reflected in paragraphs (a) (1) through (6), he may authorize or direct the member's discharge and is not required to forward the case to the Commandant of the Marine Corps, except for review as provided by paragraph (d) of this section. Except as provided in the foregoing text of this paragraph, all recommendations for a member's discharge by reason of unsuitability submitted by commanding officers or officers in charge not under the command of a Marine commander exercising general court-martial jurisdiction will be forwarded to the Commandant of the Marine Corps (Code DM) for disposition. A discharge for reason of unsuitability will be effected with an honorable or general discharge, as warranted by the member's military record, when it has been determined that a member is unsuitable for further military service because of:

(1) *Inaptitude.* This provision is applicable to those members who are best described as inapt, due to lack of general adaptability, want of readiness or skill, unhandiness, or inability to learn.

(2) *Enuresis.* This provision contemplates a final diagnosis by a medical officer.

(3) *Character and behavior disorders.* As determined by medical authority, this provision contemplates those character and behavior disorders and disorders of intelligence listed in Department of Defense Disease and Injury Codes (TB Med 15 (NAVMED P-5082) AFM 160-24). However, discharges normally should not be effected for combat exhaustion (3263) and other acute situational maladjustments (3264), per se, but they may be effected for more basic underlying character and behavior disorders of which the transient state is a manifestation.

(4) *Financial irresponsibility.* This provision contemplates financial irresponsibility on the part of a member which clearly demonstrates that he is unqualified for retention, even though such financial irresponsibility does not fall within the purview of § 730.66(b)(5) or (6).

(5) *Apathy, defective attitudes, and inability to expend effort constructively.* As a significant observable defect, apparently beyond the control of the member, elsewhere not readily describable.

(6) *Alcoholism.* This provision contemplates a final diagnosis by a medical officer, together with additional supporting information furnished by the member's command. See also SECNAV Instruction 1910.3, paragraph 3b(5)(b), or revisions thereof.

(7) *Homosexual or other aberrant sexual tendencies.* SECNAV Instruction 1900.9 series contains controlling policy and provides for additional action required in homosexual cases. Homosexual or other aberrant sexual act(s) or conduct, as opposed to tendencies, will ordinarily be considered under the provisions of § 730.66(b)(1), rather than under the provisions of this subparagraph.

(b) *Guidelines.* Restrictions and guidelines regarding discharge by reason of unsuitability are as follows:

(1) Action with a view to discharging a member as unsuitable for any of the reasons set forth in paragraph (a)(1), (4), (5), and (6) of this section, will not normally be initiated unless the member has previously been afforded a reasonable opportunity to overcome his deficiencies. When it is determined that a member may come within the purview of any of these specific categories, the member shall be notified of his deficiencies and he shall be counseled concerning them. A brief summary of all counseling measures taken in compliance with this subparagraph shall be recorded on page 11 of the member's service record book. If no improvement is forthcoming within a reasonable time, the member should then be processed for the appropriate type of administrative discharge. Failure of a member to receive or understand the counseling prescribed herein may be considered by administrative discharge boards (in the case of a member with 8 or more years of continuous active military service), or by Discharge Authorities, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of the discharge to be awarded. However, in no event shall the failure of member to receive or understand such counseling be considered a defense in an administrative discharge proceeding or a bar thereto.

(2) A member's commanding officer or officer in charge should not normally recommend the member for discharge as unsuitable by reason of character and behavior disorders (paragraph (a)(3) of this section) based solely on one or more psychiatric evaluations. Such recommendations for discharge should be further supported by other evidence of the member's unsuitability, giving due consideration to the member's age, length of service, grade, and general aptitude; or by other evidence that the member is a chronic disciplinary problem. Members considered unsuitable for service because of character and behavior disorders, where the evidence thereof consists solely of one or more psychiatric examinations and reports, should normally be processed by medical board action in accordance with BUMED Instruction 1910.2D or revisions thereof, rather than for discharge by reason of unsuitability, as authorized herein. In this regard, commanders shall maintain appropriate li-

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aison with Navy psychiatrists and furnish to the psychiatrists the member's service record book and such other pertinent information as will assist the psychiatrist in determining whether to recommend retention or an administrative discharge in accordance with paragraph (a)(3) of this section, or an administrative discharge by medical board action in accordance with BUMED Instruction 1910.2D, or revisions thereof. The provisions of this subparagraph, may, in a specific case, also be applicable to a member being considered for administrative discharge by reason of enureses or alcoholism (paragraph (a)(2) and (6) of this section).

(c) *Referral to discharge authority.* In cases where a commander considers a member unsuitable for further military service, he will refer the case, together with his recommendations and all evidence and documents pertaining thereto, to the appropriate Discharge Authority or convening authority for disposition. At the time of submission of a recommendation for discharge, an entry will be made on page 11 of the member's service record book showing this fact and the reasons therefor. If the recommendation for discharge is finally disapproved, an entry to this effect will likewise be recorded on page 11 of the member's service record book. Prior to recommending the discharge of a member for unsuitability, the commander will investigate or cause the case to be investigated. Where a commander, or higher authority, is considering the case of a member of the grade of sergeant or above for discharge by reason of unsuitability, he may, where considered appropriate, request from the Commandant of the Marine Corps (Code DG), copies of the member's fitness reports and any other pertinent information which may be related to the reasons for discharge, or the type of discharge to be issued.

(1) Where a member with less than 8 years of continuous active military service is recommended for discharge by reason of unsuitability, the member concerned shall be notified in writing of the proposed discharge action and the reason therefor, and he shall be afforded an opportunity to make a statement in his own behalf, or to decline this opportunity in writing. The commander's recommendation and a complete report containing all the circumstances of the case, together with the member's statement, if any, shall be forwarded to the appropriate Discharge Authority.

(2) In all cases involving a recommendation for discharge by reason of unsuitability where the member concerned has 8 or more years of continuous active military service, the instructions and procedures set forth in § 730.66(f)-(j), as applicable, and those set forth below, in this subparagraph, shall govern:

(i) Where such member is under military control, he has the following rights:

(*a*) To present his case before an administrative discharge board;

(*b*) To be represented by counsel; and

(*c*) To waive the above rights, in writing, after being afforded an opportunity to consult with counsel.

(ii) If a member waives the above rights, in writing, the Discharge Authority may nevertheless disapprove the waiver and refer the case to an administrative discharge board, directing that the member be accorded his applicable rights thereat; or he may direct the member's retention; or he may direct the member's discharge by reason of unsuitability, specifying the specific basis therefor and the type of discharge certificate to be issued.

(iii) Where the member's case is referred to an administrative discharge board, see § 730.73.

(iv) For the advice to be given a member with 8 or more years of continuous active military service who is recommended for discharge by reason of unsuitability, and for the recording of such advice, see § 730.72.

(v) Should a member refuse to either request or waive his rights, an entry in explanation thereof will be made in the record of the case, and the member's case will be disposed of as if he had requested all of his applicable rights.

(d) *Forwarding to Commandant of the Marine Corps.* When final action has been taken by a Discharge Authority on a recommendation for dis-

charge by reason of unsuitability for any of the specific bases prescribed in paragraphs (a) (1)-(6) of this section, such Discharge Authority will forward all papers, or copies thereof, pertaining to the case to the Commandant of the Marine Corps (Code DG) for filing in the official record of the member concerned. However, where the specific basis for the discharge is one of the reasons prescribed in paragraphs (a) (1)-(6) of this section, but there is evidence of homosexual or other aberrant sexual tendencies present in the case, the Discharge Authority, after completion of his final action thereon, will forward the case to the Commandant of the Marine Corps (Code DK) for review.

§ 730.66 Discharge for reason of unfitness.

(a) *Authorization.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction, may authorize or direct the retention in the service or the discharge of members by reason of unfitness, except that cases involving sexual perversion as the specific basis for the proposed discharge will be referred to the Commandant of the Marine Corps (Code DK) for disposition. Where there is evidence of sexual perversion present in the case, but the local Discharge Authority determines that the specific basis for the proposed discharge should be one of the bases reflected in paragraphs (b)(2)-(7) of this section, he may authorize or direct the member's discharge and is not required to forward the case to the Commandant except for review as required by § 730.54(h).

(b) *Specific reasons.* A commanding officer or officer in charge will recommend a member for discharge by reason of unfitness when he determines that the member's military record includes one or more of the following:

(1) Sexual perversion, including, but not limited to:

(i) Lewd and lascivious act(s).

(ii) Homosexual act(s). SECNAV Instruction 1900.9 series contains controlling policy and provides for additional action required in homosexual cases.

(iii) Sodomy. SECNAV Instruction 1900.9 series contains applicable provisions.

(iv) Indecent exposure.

(v) Indecent act(s) with or assault upon a child.

(vi) Other indecent act(s) or offense(s).

(2) Frequent involvement of a discreditable nature with civil or military authorities. No specific number of acts or omissions are contemplated herein. Each case must be evaluated in light of its own particular facts to determine whether, because of such frequent involvement, the member concerned has clearly demonstrated that he is unqualified for retention and, if so, whether the character of his service has been other than honorable.

(3) An established pattern of shirking.

(4) Drug addiction or habituation, or the unauthorized use or possession of narcotics, marijuana, hypnotics, sedatives, tranquilizers, depressant or stimulant drugs, hallucinogens, and other similar drugs, chemicals, or substances, considered to be habit forming, or to have a potential for abuse because of their depressant or stimulant effect on the central nervous system or because of their hallucinogenic effect. As an aid in determining what drugs, chemicals, or substances are included within the purview of this subparagraph, see Article 1270, U.S. Navy Regulations, 1948; Title 21, U.S. Code, Chapters 6 and 9; Public Law 89-74, July 15, 1965 (Drug Abuse Control Amendments of 1965); Title 21, CFR, Part 166, 31 FR 1071, 1074, 4679; and such other regulations dealing with these subjects as may from time to time be promulgated by the Secretary of Health, Education, and Welfare, and published in the FEDERAL REGISTER and the Code of Federal Regulations.

(5) An established pattern showing dishonorable failure to pay just debts.

(6) An established pattern showing dishonorable failure to contribute adequate support to dependents, or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(7) Unsanitary habits. This provision includes, but is not limited to, the oc-

currence of repeated venereal disease infections during the member's current enlistment or period of service. When reporting repeated venereal disease infections, indicate the date of each admission and the specific nature of the infection. See Department of the Navy General Order No. 18, and SECNAV Instruction 6222.1 or revisions thereof.

(c) *Counseling.* Action with a view to discharging a member as unfit for any of the reasons set forth in paragraphs (b) (2), (3), (5), (6), and (7) of this section, will normally not be initiated unless the member has previously been afforded a reasonable opportunity to overcome his deficiencies. When it is determined that a member may come within the purview of these specific categories, the member shall be notified of his deficiencies and he shall be counseled concerning them. A brief summary of all counseling measures taken in compliance with this subparagraph shall be recorded on page 11 of the member's service record book. If no improvement is forthcoming within a reasonable time, the member should then be processed for the appropriate type of discharge. Failure on the part of a member to receive or understand the counseling prescribed herein may be considered by discharge boards and Discharge Authorities, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of discharge to be awarded. However, in no event shall the failure of the member to receive or understand such counseling be considered a defense in an administrative discharge proceeding or a bar thereto.

(d) *Investigation.* Before recommending a member for discharge by reason of unfitness, the commanding officer or officer in charge shall investigate or cause each case to be investigated. The circumstances, facts, and offenses shall be substantiated by entries or documents from the member's service records, and/or other pertinent information, and the original or copies thereof shall be enclosed with the recommendation.

(e) *Service record entry.* At the time of submission of a recommendation for discharge, an entry will be made on page 11 of the member's service record book showing this fact and the reasons therefor. If the recommendation for discharge is finally disapproved, an entry to this effect will likewise be recorded on page 11 of the member's service record book.

(f) *Referral to board.* Except as provided in §§ 730.54(c) and 730.74(b), all recommendations for a member's discharge by reason of unfitness will be referred to an administrative discharge board convened and conducted in accordance with § 730.73.

(g) *Advice and according of rights.* A member recommended for an undesirable discharge by reason of unfitness will be advised in accordance with § 730.72, and will be accorded those rights prescribed by §§ 730.54, 730.72, and 730.73. The nature of the advice given and the method by which it is transmitted to a respondent, and the nature of the rights to be accorded a respondent, will, under the applicable provisions of this subpart, depend upon whether or not the respondent is on active duty, whether or not the respondent is under military control, the extent to which a respondent effectively waives his rights, and whether or not the respondent requests discharge for the good of the service.

(h) *Report of board and action thereon.* Where an administrative discharge board is held, the report of the board will be submitted to the convening authority thereof in accordance with § 730.73. Upon receipt of the board's report, the convening authority will take the following action thereon:

(1) If the convening authority is not the appropriate Discharge Authority, he will forward the record of the case, including the report of the board and his recommendations thereon, to the Marine commander next in the chain of command exercising general court-martial jurisdiction, or to the Commandant of the Marine Corps (Code DK), as appropriate, for disposition.

(2) If the convening authority is the appropriate Discharge Authority, he will take one of the actions permitted by § 730.73(i)(2).

(i) *Action without board proceedings.* Where no administrative discharge board is held because of the ap-

plicability of any of the provisions of §§ 730.54(c) and 730.74(b), the authority empowered to convene an administrative discharge board, and to whom the case has been submitted, will take the following action thereon:

(1) If such authority is not the appropriate Discharge Authority, he will forward the entire record of the case, together with his recommendations thereon, to the appropriate Discharge Authority indicated in § 730.66(h)(1) for final disposition.

(2) If such authority is the appropriate Discharge Authority, he will take one of the following actions, regardless of the recommendations of the member's commanding officer or officer in charge (see § 730.51(r)):

(i) Direct the member's retention in the service.

(ii) Approve the member's discharge, specifying the type and bases thereof, but suspending the execution of the discharge for a specified period of probation in accordance with § 730.75.

(iii) Direct the member's discharge, specifying the type and bases thereof.

(j) *Transfer.* Members serving outside the continental United States shall be transferred to the nearest Marine Corps activity in the continental United States by the Marine commander exercising general court-martial jurisdiction who directs or recommends the discharge. Except where the Discharge Authority is the Commandant of the Marine Corps or the Secretary of the Navy, the authority for discharge will be included in the orders transferring the member to the continental United States. Commanders of activities outside the continental United States, not under the command of a Marine commander exercising general court-martial jurisdiction other than the Commandant of the Marine Corps, will transfer to the nearest Marine Corps activity in the continental United States those members who have been recommended for discharge by an administrative discharge board convened under the provisions of § 730.73, or those members who have been recommended for administrative discharge by their commanding officer or officer in charge and have waived, in writing, the right to have their case heard by an administrative discharge board. Such commanders, in their endorsement of the proceedings of the board, or in the recommendation for the member's discharge, will indicate the activity in the continental United States to which the member is being transferred.

(k) *Forwarding for review.* When final action has been taken on any report or recommendation by a Discharge Authority other than the Secretary of the Navy or the Commandant of the Marine Corps, the Discharge Authority will forward all papers pertaining to the case to the Commandant of the Marine Corps (Code DK) for review. See § 730.54(h).

(l) *Action in cases of previous Background Investigation.* For action to be taken before the execution of approved discharges authorized under the provisions of §§ 730.66 and 730.67, see § 730.51(p).

§ 730.67 Discharge by reason of misconduct.

(a) *Authorization.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction, may authorize or direct the retention in the service or the discharge of members by reason of misconduct, except that cases involving procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment of preservice homosexual act(s) or tendencies will be referred to the Commandant of the Marine Corps (Code DK) for disposition.

(b) *Report.* The commanding officer or officer in charge shall make a report of suspected or apparent misconduct by a member for any of the following reasons, and shall include in the report all relevant and material documentary evidence pertaining to the case, and his specific recommendation for discharge or for retention in the service of the member concerned:

(1) When a continuous unauthorized absence of more than 1 year has been established by official records, but the execution of a finally approved punitive discharge of the member has not been authorized by competent authority. See § 730.54(c)(1) where the

member is beyond military control. Where the member has returned or been returned to military control, see § 730.51(m)-(o), if applicable.

(2) Procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time thereof, would have reasonably been expected to have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction. MCO P1100.61, Recruiting Service Manual, Part B, contains a pertinent provisions. The enlistment of a minor with false representation as to age, or without proper consent from his parents or legal guardians, will not, by itself, be considered as a fraudulent enlistment. See § 730.64(g). The procurement of a fraudulent enlistment, induction or period of active service may be based upon, but is not limited to, any deliberate material misrepresentation of or concerning the following:

(i) A police record, or conviction by civil court.

(ii) A record as a juvenile delinquent, wayward minor, or youthful offender. See, however, § 730.61(b)(3). Except as otherwise provided in § 730.61(b), and in addition to any other action required by the provisions of this subpart, in a case involving the procurement of a fraudulent enlistment, induction, or period of active service through a deliberate material misrepresentation of or concerning a record as a juvenile delinquent, wayward minor, or youthful offender, the following action will be taken:

(*a*) All the relevant facts pertaining to the case will be ascertained by establishing liaison with the civil authorities in order to determine the actual offense(s) committed by the member; all the circumstances in the case; and the final disposition by juvenile or youthful offender courts (when permitted by local law), including the actual period of confinement served, and whether civil probation exists.

(*b*) Any other information deemed relevant to an evaluation of the member's case will be obtained.

(*c*) An evaluation of: The facts obtained, the member's statement, the character of the member's military service rendered, and the provisions of § 730.51(c), will be made to determine whether the member's discharge or retention should be directed.

(*d*) If discharge is deemed proper in these cases, it should normally be under honorable conditions, unless the particular circumstances of the case clearly warrant a less favorably type of discharge.

(iii) Previous service in any branch of the Armed Forces.

(iv) Physical defects.

(v) Marriage or dependents. See, however, § 730.61(b)(2).

(vi) Preservice homosexual act(s) or tendencies. SECNAV Instruction 1900.9 series contains controlling policy and provides for additional action required in homosexual cases.

(3) Conviction by civil authorities (foreign or domestic), or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or punished in any way as the result of an offense involving moral turpitude. If the offense is not listed in the Manual for Court-Martial Table of Maximum Punishments, or is not closely related to an offense listed therein, the maximum punishment authorized by the U.S. Code, or the District of Columbia Code, whichever is lesser, applies.

(i) A member subject to administrative separation pursuant to the provisions of paragraph (b)(3) of this section may be processed therefor notwithstanding the fact that he has filed an appeal or has stated his intention to do so. However, no approved administrative separation from the naval service, which is based solely or in part upon a conviction, or upon a juvenile, wayward minor, or youthful offender adjudication by civil authorities, will, during the period an appeal from such conviction or adjudication is actually pending, or is reasonably expected to be pending, be executed without the prior express approval and direction of

the Secretary of the Navy. Requests should not be made to the Secretary of the Navy for his approval and direction of the execution of an administrative discharge under these circumstances, except in those unusual cases where such action is essential in the interests of justice, discipline, and proper administration within the naval service. For example, such requests should be made to the Secretary of the Navy when the member's current period of obligated active or inactive service will expire before final action on the member's appeal can reasonably be expected, or in a case where it appears that the member's continued presence with the command is considered inimical to the health, morals, or welfare of the other members of the command.

(ii) In each case where a member is recommended for discharge by reason of misconduct because of the applicability of the provisions of paragraph (b)(3) of this section, the permanent record will contain, where available, a copy of the court order or order of commitment, or the certificate of the judge or the clerk of the court, advising as to the charge(s) of which the member was convicted, the sentence adjusted, and the disposition of the appeal, if any. Additionally, where available, a copy of the arresting officer's report and/or a copy of the presentence report of the probation officer, if any, will be included. Extreme care must be taken to insure that the particular offense(s) of which the member was convicted by civil authorities and the circumstances of their commission, are clearly and specifically identified and described so that the maximum permissible penalty therefor under the Uniform Code of Military Justice (10 U.S.C. 801-940), or the U.S. Code, or the District of Columbia Code, as applicable, can be ascertained. In making this determination, neither the name or label attached to an offense by civil authorities, nor the characterization of the nature of the crime (i.e. a crime involving moral turpitude, a felony or misdemeanor), by civil authorities is controlling.

(iii) As used in paragraph (b)(3) of this section, the term "convicted (or a conviction) by civil authorities" includes not only final convictions by civilian courts of record, but all final determinations by civil authorities (including those made by a magistrate, a justice of the peace, a municipal court, or other inferior courts) or criminality on the part of a member, and those cases in which civil authorities have adjudged a member a juvenile delinquent, a youthful offender or a wayward minor. It is immaterial whether or not, as a result thereof, probation is imposed; and sentence is executed; execution of a sentence is deferred, delayed or suspended; or whether, by local law, custom or procedure, charges are dismissed or expunged from civil records after payment of a fine, completion of a term in jail or a penitentiary, or completion of a period of probation.

(iv) No member will be administratively discharged under conditions other than honorable if the grounds for such discharge are based wholly or in part upon acts or omissions for which the member has been previously tried in civil court resulting in acquittal or action having the effect thereof, except where such acquittal or equivalent disposition is based on a legal technicality not going to the merits. (See § 730.54(e)(2).)

(v) In cases involving the conviction of members by foreign civil authorities, see SECNAV Instruction 5820.4B, or revisions thereof, particularly Part IV, paragraph 5, on page 12 thereof, which prohibits the discharge of members confined in foreign prisons until the completion of their term of imprisonment and their return to the United States, except that in unusual cases such discharges may be executed upon the express authorization of the Secretary of the Navy. Despite the foregoing, such members may be processed for discharge, and their discharge approved, although not executed, at any time subsequent to their conviction.

(c) *Applicable provisions.* The instructions and procedures set forth in § 730.66(d)-(1) shall also govern the disposition of cases involving members considered for discharge by reason of misconduct.

§ 730.68 Discharge adjudged by sentence of court-martial.

(a) *Definition.* The word "discharge" or "discharges", as used in this section, refers to punitive (i.e. dishonorable and bad conduct) discharges adjudged by sentences of courts-martial.

(b) *Policy.* It has been, and continues to be, the Navy Department's policy that convening and reviewing authorities should approve discharges only in those cases where members' records and conduct show conclusively that they are not fit for retention, and where retention is clearly not in the Government's interest.

(c) *Manual for Courts-Martial.* The appropriateness of a punitive discharge as the sentence, or as part of the sentence, of a court-martial is discussed in the Manual for Courts-Martial, United States, 1951, subparagraphs 76a(6) and (7).

(d) *Synopsis.* A convening authority, in those cases where he approves a punitive discharge, will include in his action a brief synopsis of the disciplinary features, as well as favorable matters, of the accused's service during his current enlistment, as reflected in the accused's service record book.

(e) *Copy of synopsis for accused.* Prior to taking his action, however, the convening authority will furnish a copy of the foregoing synopsis to the accused or his counsel, as appropriate, for such statement in rebuttal or explanation as the accused may desire to make.

(f) *Completion of appellate review.* A punitive discharge will be effected only after appellate review of the proceedings, and clemency action, in accordance with current directives, have been completed. In those cases where confinement is adjudged in addition to a punitive discharge, the discharge shall not be effected until the completion of appellate review or completion of the sentence of confinement, whichever is later. An exception to the foregoing may be made where the period of confinement is to be served in a Federal penal institution. In such cases the discharge may be effected upon the completion of appellate review without waiting until the sentence of confinement is completed. See SECNAV Instruction 5815.3A, or revisions thereof (§ 719.205 of this chapter).

(g) *Transfer from outside the continental United States.* Except when the discharge has been suspended for a stated number of months to permit the person to continue in the service after serving satisfactorily during a probationary period, the transfer of personnel sentenced to discharge (including those to be discharged on account of vacation of suspended sentence) who are serving outside the continental limits of the United States will be governed by the following instructions:

(1) When an enlisted person who has been sentenced to discharge is serving outside the continental limits of the United States, whether it is ashore or on board ship, transfer will be made to the Marine Corps activity within the continental limits of the United States nearest the port of debarkation, for retention or redesignation of a place of temporary custody or confinement in accordance with current directives.

(2) Transfer to the continental limits of the United States in case of a person sentenced to discharge will not be effected until review has been completed by the officer exercising general court-martial jurisdiction, the promulgating order issued, and appropriate entries made in the service record book to show the action taken by the officer exercising general court-martial jurisdiction.

(3) Transfer to the continental limits of the United States, in those cases where, pursuant to the Manual of the Judge Advocate General, the record of trial is submitted directly to the Office of the Judge Advocate General without review by an officer exercising general court-martial jurisdiction, will be effected after appropriate entries have been made in the service record book to show the action taken by the convening authority.

(4) When transfer to the United States is directed, report of same shall be made to the Judge Advocate General of the Navy in accordance with the Manual for Courts-Martial, United States, 1951, paragraph 96, with copy to the Commandant of the Marine Corps (Code DK), indicating the type of court-martial, sentence as approved

at the time of transfer, the name of the activity to which the individual is transferred, and the estimated date of reporting to the new activity. Upon the arrival of such personnel at the new activity, the commander of that activity will immediately advise the Judge Advocate General of the Navy by message, airmail letter, or speedletter, with copy to the Commandant of the Marine Corps (Code DK). When a different activity or Naval Disciplinary Command is redesignated as the place of temporary custody or confinement, this fact will be set forth in the report, and the date of transfer to that activity or command will be stated.

(5) No punitive discharge is to be effected outside the continental limits of the United States, except in accordance with instructions of the Secretary of the Navy or the Commandant of the Marine Corps.

(h) *Disposition of dischargee serving in continental United States.* When an enlisted person serving at a station within the continental limits of the United States has been sentenced to discharge, and the discharge has not been suspended for a stated number of months to permit the person to continue in the service after satisfactorily serving during a probationary period, the individual will be retained at the place of trial or transferred to another activity, or a Naval Disciplinary Command, in accordance with periodic directives of the Commandant of the Marine Corps and the Bureau of Naval Personnel governing designation of places of confinement. When an individual is transferred to another station or to a Naval Disciplinary Command, report of the transfer will be made to the Judge Advocate General of the Navy, with copy to the Commandant of the Marine Corps (Code DK). (See Manual for Courts-Martial, United States, 1951, paragraph 96.)

(i) *Transfer to Naval Disciplinary Command.* When an enlisted person serving within the United States, attached to a vessel or organization destined for transfer to foreign duty, has been sentenced to discharge and the discharge has not been suspended for a stated number of months to permit the person to continue in the service after serving satisfactorily during a probationary period, he shall be transferred to a Naval Disciplinary Command if he meets the established criteria for transfer to such a command; otherwise he shall be transferred to the Marine Corps activity nearest to the port of departure prior to sailing. In such cases, a report of transfer will be made as set forth in paragraph (h) of this section.

(j) *Transfer of enlisted woman.* An enlisted woman who has been sentenced to discharge will be transferred to the nearest post, station, or barracks where women are serving.

(k) *Suspension and vacation of suspension.* Where execution of a portion of a sentence which adjudges a discharge is suspended, subject to a probationary period, the suspension may be vacated pursuant to the procedure set forth in paragraph 97b, Manual for Courts-Martial, United States, 1951. Commanders are directed to give careful consideration to reports of offenses committed by personnel serving in such status, and to undertake proceedings for the vacation of suspension of the sentence only where it is established by the record that such action is appropriate and in the best interest of the Marine Corps. For a new offense the commander may:

(1) Award nonjudicial punishment, or recommend or direct trial by court-martial, (2) initiate procedure for vacation of suspension, or (3) both.

(l) *Warrant officer cases.* A chief warrant officer may be dismissed from the service and a warrant officer may be dishonorably discharged from the service, pursuant to the sentence of a general court-martial. In time of war, the President may order the dismissal of such officers.

§ 730.69 Discharge by reason of security.

Only the Commandant of the Marine Corps or the Secretary of the Navy, may direct the discharge of a member with an honorable, general, or undesirable discharge, for reason of security. See § 730.51(b)(11) and Part 729 of this chapter.

§ 730.70 Request for discharge for the good of the service.

(a) *Processing of requests.* All requests for discharge for the good of the service in cases involving security matters; or sexual perversion; or procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment of preservice homosexual act(s) or tendencies; will be referred to the Commandant of the Marine Corps (Code DK) for disposition. In other cases, the Commandant of the Marine Corps, or any Marine commander exercising general court-martial jurisdiction, may, without administrative discharge board action, authorize or direct the discharge, with an undesirable discharge, of any member who submits a request for discharge for the good of the service (see § 730.51(b)(10)). Such requests may be submitted and processed where the member's conduct renders him triable by court-martial for an offense punishable by a punitive discharge (see Manual for Courts-Martial, 1951, paragraph 127c, sections A and B; and Uniform Code of Military Justice, articles 77-134); provided that the member has been afforded the opportunity to consult with counsel, and the member certifies in writing his understanding that he will receive a discharge under other than honorable conditions, that he understands the adverse nature of such a discharge, and that he understands the possible consequences thereof. Notwithstanding a member's submission of a request for discharge for the good of the service, the appropriate Discharge Authority may take any of the different courses of action indicated in § 730.51(k), e.g., refer the member concerned to an administrative discharge board.

(b) *Advice.* For the advice to be given a member who requests discharge for the good of the service, and for the recording of such advice, see § 730.72(a) (1) and (3).

(c) *Suspension.* A discharge approved as a result of a member's request for discharge for the good of the service may be suspended. See § 730.75.

(d) *Withdrawal of request.* Where a member submits a request for discharge for the good of the service and subsequently withdraws his request before its approval by the Discharge Authority, the provisions of § 730.51(k) and (o)(2) apply. In such cases, the member may be processed for appropriate punitive or administrative action based upon the acts or omissions upon which his original request for discharge was based, or for other appropriate reasons, as if he had never submitted a request for discharge for the good of the service.

(e) *Types of discharge.* Notwithstanding a member's written acknowledgement that he will receive an undesirable discharge as a result of his submission of a request for discharge for the good of the service, the Discharge Authority, or higher authority, may direct the member's separation with either an honorable or general discharge, as warranted by the member's military record.

(f) *Contents of request.* A member who submits a request for discharge for the good of the service will complete such request by signed statement in tenor as follows, witnessed by at least one witness:

Article 31, UCMJ, having been read and explained to me, and with full understanding of my rights, I hereby request discharge for the good of the service. This request is based on having been informed that my conduct rendered me triable by court-martial for the following offense(s) in violation of the Uniform Code of Military Justice, the maximum permissible punishment for which, upon conviction, includes a (dishonorable) (bad-conduct) discharge:

_____

_____

_____

Prior to submitting this request I have been afforded the opportunity to consult with counsel. (and I have consulted with the following counsel and I am entirely satisfied with his advice:

_____

_____

I understand that my discharge from the naval service, effected by acceptance of this

request, will be with an undesirable discharge, which will be issued without referral to or consideration of my case by an administrative discharge board. I understand that an undesirable discharge is a discharge under other than honorable conditions and that as a result of such discharge I may be deprived of virtually all rights as a veteran under both Federal and State legislation, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge received therefrom may have a bearing.

The signatures of the witnesses should follow the signature of the member. Military witnesses should be identified by name, grade, service number, organization, and Armed Force. Civilian witnesses should be identified by name and address. Where one of the witnesses is the member's counsel, he should be identified as such.

(g) *Forwarding of papers.* For the forwarding of all papers pertaining to the case when final action has been taken thereon by a Discharge Authority other than the Commandant of the Marine Corps or the Secretary of the Navy, see § 730.54(h).

(h) *Overseas cases.* For the action to be taken in cases involving members serving outside the continental United States, see § 730.66(j).

§ 730.71 Discharges of Security Forces personnel, Pacific Ocean Area.

The Commanding General, Fleet Marine Force, Pacific, shall exercise such administrative control over matters relating to administrative discharges involving enlisted members of the Marine Corps Security Forces, Pacific Ocean Area, as is otherwise delegated to all Marine Commanders exercising general court-martial jurisdiction in accordance with §§ 730.100 to 730.126.

§ 730.72 Giving and recording of advice to a respondent, both when the respondent is and when he is not under military control.

(a) *Requirements.* Whether or not a respondent is under military control, no administrative discharge under conditions other than honorable, and, in the case of a member with 8 or more years of continuous active duty no administrative discharge by reason of unsuitability, will be effected unless the respondent is tendered the advice prescribed below:

(1) *Advice to respondent under military control.* In each case where a member on active duty and under military control is recommended for an undesirable discharge, or has 8 or more years of continuous active military service and is recommended for a discharge by reason of unsuitability, or requests a discharge for the good of the service within the purview of § 730.70, the officer empowered to convene an administrative discharge board having jurisdiction over the member will take or cause to be taken the following action:

(i) Notify the member, in writing, of the proposed discharge action and the general and specific bases therefor.

(ii) Advise the member of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(iii) Advise the member that he has the following rights, which will, unless he waives such rights in writing, be afforded him: To present to and have his case considered by an administrative discharge board of not less than three officers, at least one of whom will be a field grade officer, and composed in accordance with § 730.73(b); to appear in person before such board, subject to his availability; and to be represented by military counsel, who will be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. Advise the member that if he does not waive a hearing before an administrative discharge board, and upon the hearing of his case before such board, he will be entitled to those rights set forth in § 730.73(c) (2) through (5), (12), (14), (15), (18); (f), and (g). The advice as to the respondent's rights contained in the cited paragraphs of § 730.73 may be given in a summarized form. Further advise the member that before waiving any of these rights, in writing, it would be

to his advantage to consult with counsel and that he will be given the opportunity to do so.

(iv) Advise the member who indicates that he wishes to submit a request for discharge for the good of the service, pursuant to § 730.70, that, if such request is accepted, he may receive a discharge under other than honorable conditions without administrative discharge board action, and further advise him of the adverse nature of such discharge and the possible consequences thereof. Before a member is permitted to actually submit a request for discharge for the good of the service, he will be advised that it would be to his advantage to consult with counsel and he will be given the opportunity to do so.

(2) *Advice to respondent not under military control.* In each case where a member on active duty is recommended for an undesirable discharge, or has 8 or more years of continuous active military service and is recommended for a discharge by reason of unsuitability, and the member is not under military control because of either his continuous established unauthorized absence of more than 1 year, or because of his confinement by civil authorities, the officer empowered to convene an administrative discharge board having jurisdiction over the member will take or cause to be taken the following action: (Where the member is not under military control because of the continuous established unauthorized absence of more than 1 year, the action prescribed by paragraph (a)(2)(ii) of this section will ordinarily be taken or caused to be taken by the Commandant of the Marine Corps. See § 730.54(c)(1).)

(i) Where the member is not under military control and is unable to appear before an administrative discharge board because of his confinement by civil authorities, advise the member, in writing and by registered mail sent to the civil institution where the member is confined:

(*a*) Of the proposed discharge action and the general and specific bases therefor.

(*b*) Of the type of discharge certificate that may be issued.

(*c*) Of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(*d*) Of the fact that administrative discharge action has been suspended to give him the opportunity to exercise the following rights: To request the appointment of a military counsel, who will be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel, and to have such counsel represent him, and in his absence, present his case before an administrative discharge board; to submit statements in his own behalf; and to waive the foregoing rights, either in writing, or by the failure to reply to the letter of notification within the prescribed time limit specified therein.

(ii) Subject to the provisions of Title 10, U.S. Code 1163, where the member is not under military control by reason of a continuous established unauthorized absence of more than 1 year, advise the member, in writing and by registered mail sent to the current home of record address of the member, or the current address of his next of kin as reflected in the member's service records, as appropriate:

(*a*) Of the proposed discharge action and the general and specific bases therefor.

(*b*) Of the effective date of the proposed discharge action.

(*c*) Of the type of discharge certificate that may be issued.

(*d*) Of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(3) *Recording advice given respondent under military control.* In each case where a member on active duty and under military control is recommended for an undesirable discharge, or has 8 or more years of continuous active military service and is recommended for discharge by reason of unsuitability, or requests discharge for the good of the service within the purview of § 730.70, and after the advice prescribed in paragraph (a)(1) of this

section has been given and the opportunity to consult with counsel has been afforded, the permanent record will contain either the following, or in lieu thereof, a certification by the officer taking the action prescribed by paragraph (a)(1) of this section that such action has been accomplished:

(i) A copy of the written notification to the member of the general and specific bases for the proposed discharge action.

(ii) The member's written acknowledgement of the advice given him of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records.

(iii) The member's written acknowledgement that he was given and understands the advice prescribed in paragraph (a)(1) (iii) and/or (iv) of this section.

(iv) The member's written waiver of any or all of the rights prescribed in paragraph (a)(1)(iii) of this section, and/or the member's written request for discharge for the good of the service, together with the member's written acknowledgement that he was afforded the opportunity to consult with counsel prior to effecting such waivers and/or request for discharge. The member's written acknowledgement will include the fact that he either chose not to consult with counsel prior to effecting such waivers and/or request for discharge, or, if he did so consult with counsel, the specific identity of the counsel and his legal qualifications.

(4) *Recording advice given respondent not under military control.* In each case where a member on active duty is recommended for an undesirable discharge, or has 8 or more years of continuous active military duty and is recommended for a discharge by reason of unsuitability, and the member is not under military control because of his continuous established unauthorized absence of more than 1 year, or because of his confinement by civil authorities, and after the advice prescribed in paragraph (a)(2) of this section has been given, the permanent record will contain the following:

(i) A certified copy of the registered letter or letters sent to the member pursuant to paragraph (a)(2) (i) or (ii) of this section, including a certification as to the date any letter was mailed and the address to which it was sent.

(ii) The complete reply or replies of the member and/or his next of kin to the registered letter or letters sent pursuant to paragraph (a)(2) (i) or (ii) of this section, or a certification that no reply from the member and/or his next of kin was received by a specified date.

(iii) Evidence that the registered letter or letters sent pursuant to paragraph (a)(2) (i) or (ii) of this section was delivered, or was not delivered, or was undeliverable.

(iv) The member's written waiver, if any, of any or all of his rights prescribed by paragraph (a)(2) (i)(*d*) of this section.

(5) *Advice to a respondent who is a member of the Marine Corps Reserve on inactive duty.* (i) In each case where a Reservist on inactive duty is recommended for an undesirable discharge, or where such Reservist has 8 or more years of continuous active duty and is recommended for discharge by reason of unsuitability, the officer empowered to convene an administrative discharge board having jurisdiction over the member will take or cause to be taken the following action, in the form prescribed in paragraph (a)(5)(ii) of this section:

(*a*) Notify the member, in writing, of the proposed discharge action, the general and specific bases therefor, and the type of discharge certificate that may be issued.

(*b*) Advise the member of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(*c*) Advise the member that if he is reasonably available to appear before an administrative discharge board, he has the following rights, which will, unless he waives such rights in writing, be afforded him: To present to and have his case considered by an administrative discharge board of not less than three officers, at least one of whom will be a field grade officer, and composed in accordance with § 730.73(b); to appear in person before

such board, subject to his availability; and to be represented by civilian counsel at no expense to the Government, or to be represented by military counsel, who will be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice, unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel.

NOTE: Despite the fact that military counsel who is a lawyer within the meaning of article 27(b)(1), UCMJ, will not normally be on active duty within a reserve unit, the availability of such counsel must, nevertheless, be determined in each case in accordance with the general principles contained in § 730.73(f).

Advise the member that if he does not waive a hearing before an administrative discharge board, and upon the hearing of his case before such board, he will be entitled to those rights set forth in § 730.73(c)(2) through (5), (12), (14), (15), (18); (f), and (g). The advice as to the respondent's rights contained in the cited paragraphs of § 730.73 may be given in a summarized form. Further advise the member that before waiving any of these rights, in writing, it would be to his advantage to consult with counsel and that he will be given the opportunity to do so.

(*d*) Advise the member that if he either fails to reply to the letter of notification and advice within the prescribed time limit specified therein, or if he replies to such letter and does not waive in writing his right to appear in person before an administrative discharge board but, after being notified of the time and place of the meeting of the board, fails to appear, he will be considered to have effectively waived all of his rights before the board and the board will proceed in his absence with the appropriate disposition of his case.

(*e*) Advise the member that if he does choose to appear in person before an administrative discharge board, such appearance will be at no expense to the Government.

(ii) The giving of the notification and advice required by paragraph (a)(5)(i) of this section will be accomplished by the mailing of a registered letter, containing such notification and advice, addressed to the member concerned at the mailing address which the records of the activity mailing the letter indicate as the most recent one furnished by the member as an address at or from which official mail will be received or forwarded to him. In addition to, or under appropriate circumstances in lieu of, a letter so addressed, a registered letter addressed to the member concerned containing this notification and advice may be directed to any of the following:

(*a*) The city, town, or community in which the member has last been reported to be residing, or the post office address apparently nearest his last reported place of residence, or

(*b*) In care of any person whom the member has at any time designated in his service records (i.e., in blocks 16–18 of DD Form 93–1), as a beneficiary or as one to be notified in the event of his serious injury or death, sent to the mailing address which the records of the authority originating the letter indicate as the most recent one furnished by the member concerned for such person, or

(*c*) In care of any institution in which the member has been reported to be hospitalized or confined.

Neither the absence of an indication of delivery, nor the return as undeliverable, of a registered letter addressed as outlined above, will negate the legal efficacy of such letter as the notification and advice required by paragraph (a)(5)(i) of this section to be given to the member concerned. It is the responsibility of each member of the Marine Corps Reserve to ensure that the records pertaining to him accurately and currently reflect a mailing address at which he can be reached.

(6) *Recording advice given to a respondent who is a member of the Marine Corps Reserve on inactive duty.* In each case where a Reservist on inactive duty is recommended for an undesirable discharge, or where such Reservist has 8 or more years of continuous active duty and is recommended for discharge by reason of unsuitability, and after the notification

and advice prescribed by paragraph (a)(5) of this section has been given and the opportunity to consult with counsel has been afforded, the permanent record will contain the following:

(i) A certified copy of the registered letter or letters sent to the member pursuant to paragraph (a)(5) of this section, including a certification as to the date each letter was mailed and the address to which it was sent.

(ii) The complete reply or replies of the member and/or others acting on his behalf to any registered letter sent to him pursuant to paragraph (a)(5) of this section, or a certification that no reply from the member and/or others acting on his behalf was received by a specified date.

(iii) Evidence that any registered letter was delivered, or was not delivered or was undeliverable.

(iv) Evidence that a respondent, who did not waive, in writing, his right to appear before an administrative discharge board, after being notified of the time and place of the meeting of the board, failed to appear. In this event, all the known circumstances relating to such nonappearance should be reflected.

(v) The member's written waiver of any or all of his rights prescribed by paragraph (a)(5)(i)(*c*), together with the member's written acknowledgment that he was afforded the opportunity to consult with counsel prior to effecting such waivers, or a certification reflecting that such opportunity was afforded the member. Certification will be made of the fact that the member chose not to consult with counsel prior to effecting such waivers, or if he did so consult with counsel, the specific identity of the counsel and his legal qualifications.

(b) *Member's refusal.* Should any member affirmatively refuse to either request or waive his rights, and persist in such refusal, an entry in explanation thereof will be made in the record of the case, and the member's case will be disposed of as if he had requested all of his applicable rights.

§ 730.73 Administrative discharge boards.

(a) *Convening authorities.* An administrative discharge board, as required by this subpart, shall be convened by:

(1) Any Marine commander exercising general court-martial jurisdiction; (2) any director of a Marine Corps District; (3) any commanding officer of a Marine Barracks; or (4) any subordinate commanding officer or officer in charge when specifically authorized to do so by a superior authority who is a Marine commander exercising general court-martial jurisdiction.

When a board is convened under delegated authority, as authorized in this paragraph, the order appointing the board will contain specific reference to the source of such delegated authority, and the recommendations of the member's commanding officer or officer in charge, and the report of the board, with the convening authority's recommendation thereon, will be forwarded to the Marine commander exercising general court-martial jurisdiction for appropriate action. See paragraphs (d) and (i)(1) of this section and § 730.66(h)(1).

(b) *Composition.* The voting membership of an administrative discharge board shall be composed of at least three experienced commissioned officers, at least one of whom must be serving in the grade of major/lieutenant commander or higher.

(1) A nonvoting recorder will be appointed to each administrative discharge board. An assistant recorder may be appointed. The assistant recorder may, under the direction of the recorder, perform any duty or function which the recorder is required or empowered to perform. The recorder's primary responsibility is to exploit all practical sources of information and to bring out all the facts in an impartial manner in order to permit the board to make fully informed findings, opinions (if required by the convening authority), and recommendations concerning the respondent. The recorder and assistant recorder should be experienced officers and may be warrant officers or commissioned officers. The recorder and/or the assistant recorder may be a lawyer within the meaning of article 27(b)(1), UCMJ; however, where the respondent is represented by counsel, neither the recorder nor

the assistant recorder will possess any greater legal qualifications than those possessed by the respondent's counsel. The recorder is responsible for insuring that the board is presented only such materials and documents which may properly be considered by it. The recorder is also responsible for insuring that the board is presented all testimony, materials, and documents which are necessary for it to arrive at such findings, opinions (if required by the convening authority), and recommendations, as will permit the Discharge Authority to make a proper disposition of the case. The recorder will conduct a preliminary review of all available evidence, screening out improper matter, and obtaining such additional evidence as appears necessary. See paragraph (c)(13) of this section. The recorder will arrange for the time, date, and place of the hearing after consulting with the chairman of the board and the counsel for the respondent. The recorder will also arrange for the attendance at the hearing of all material witnesses, except those witnesses whose attendance is arranged by the respondent. See (c)(14) of this section.

(i) At the hearing, the recorder will conduct the direct examination of all witnesses, except those requested or called by the respondent. The recorder will not participate in the closed sessions of the board or in the determination of the board's findings, opinions (if any), and recommendations.

(ii) Under the direction of the chairman, the recorder will prepare or cause to be prepared the record of the board's proceedings. The convening authority of the board may appoint a reporter or provide other clerical assistance for the purpose of assisting the recorder in preparing the record. Normally, a summary of the testimony of witnesses personally appearing before the board will suffice. The chairman or convening authority may, at their discretion, direct the preparation of a verbatim or partially verbatim record.

(2) When the respondent is a Woman Marine, the voting membership of the board shall consist of at least one Woman Marine officer.

(3) When the respondent is a member of the Marine Corps Reserve, the voting membership of the board should include a majority of Marine Corps or Naval Reserve officers, if reasonably available. Should a majority of Reserve officers not be reasonably available, at least one voting member of the board will be a Marine Corps Reserve or Naval Reserve officer. Where the requirement that a majority of the voting membership of the board be Reserve officers cannot be met, the convening authority will certify the reasons therefor in the permanent record.

(4) If any of the above prescribed mandatory requirements for the composition of a board cannot be met in a particular case from the officer personnel locally available, the convening authority will notify the Commandant of the Marine Corps (Code DK) and request appropriate instructions.

(5) The attendance at the proceedings of an administrative discharge board becomes the primary duty of an officer designated as a member. No member shall fail in his attendance at the appointed time unless prevented by illness, or ordered away, or excused by competent authority.

(6) Unless at least three voting members of the board are present, no business other than to declare a recess or adjournment shall be transacted by the board. If it appears that a voting member will be absent for more than a short period of time and his absence reduces the voting membership present to less than three members, the convening authority will be advised and he shall then appoint an additional member(s) to insure that at least three voting members of the board are present during the conduct of all business by the board.

(7) The board may, in the absence of a voting member, proceed only if authorized and directed to do so by the convening authority. Where a new member of the board has been appointed (e.g. following a successful challenge against a former member), or where a member of the board who has been temporarily absent returns, that part of the proceedings conducted in his absence may be, with the concurrence of the counsel for the re-

spondent, orally summarized for him in open session by the recorder, or the summarized record of that part of the proceedings conducted in his absence shall be examined by him and that examination noted in the record. The appointment of a new member, or the temporary absence of a member, does not preclude that member's full participation in the deliberations of the board relating to its findings of fact, opinions (if any) and recommendations.

(c) *Procedure.* The following rules shall govern the procedure to be employed by an administrative discharge board. Where questions as to matters of procedure not covered herein are encountered, such questions will be resolved within the discretion of the board or the convening authority.

(1) *Rules of evidence.* An administrative discharge board functions as an administrative, rather than a judicial, body. Accordingly, in the board's proceedings the strict rules of evidence governing trials by courts-martial are not applicable. The admissibility of evidence is a matter within the discretion of the board. There is a sharp and distinct delineation between the administrative process, which has as its purpose the administrative elimination of unsuitable, unfit, or unqualified service members, and the judicial process, the purpose of which is to establish the guilt or innocence of a member accused of a crime and to administer punishment when appropriate. However, the board may impose reasonable restrictions as to the relevancy, competency, cumulativeness, and materiality of all matters to be considered by the board so as to promote orderly procedure and insure a full and impartial hearing.

(2) *Testimony of witnesses.* The testimony of all witnesses appearing in person before the board may, at the discretion of the convening authority or the chairman, as appropriate, be taken under oath or affirmation, except that the respondent may make an unsworn statement, which may include, but is not limited to, matters concerning the acts or omissions which form the basis for his being considered for discharge, or in extenuation or mitigation thereof. The respondent may not be cross-examined upon his unsworn statement, however, evidence may be introduced to rebut any statements of fact contained therein. The respondent's unsworn statement may be oral or in writing, or both, and may be made by the respondent or his counsel, or by both of them. The respondent's statement should be factual, not argumentative, in nature. See paragraph (c)(18) of this section pertaining to arguments.

(3) *Explanation of respondent's rights.* At the outset of the proceedings, the board will ascertain whether or not the respondent has been fully advised of and understands all his rights before the board. The assurance of the respondent's counsel in this regard will normally suffice. If the board is not satisfied that the respondent has been so advised, or that he does not fully understand any explanation previously given, the board will clearly explain his rights to him.

(4) *Exercise and waiver of respondent's rights.* The respondent will be given a reasonable opportunity to exercise any and all of his rights before the board. However, the failure of the respondent to exercise or invoke any of his specified rights, after he has been apprised of the same, will not be considered as a bar to the board proceedings, findings, opinions (if any), and recommendations, and such rights will be conclusively presumed to be waived by him.

(5) *Self-incrimination prohibited.* Within the purview of paragraph (g)(3) of this section, no witness, including the respondent, appearing before the board shall be compelled to incriminate himself or to answer any questions the answer to which may tend to incriminate him; nor shall he be compelled to make any statement or produce evidence if the statement or evidence is not material to any matter under investigation and may tend to degrade him. Other than the respondent, any person, whether or not charged with or suspected of an offense, may be called as a witness before the board, whether or not he requests to be a witness. See, however, paragraph (c)(14) of this section as to the authority to compel the attendance of witnesses. If a witness who is

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subject to the Uniform Code of Military Justice, including the respondent, is accused of, suspected of, or charged with, an offense, he shall, prior to his testifying, be informed of the nature of the offense and shall be advised that he does not have to make any statement or give any testimony regarding the offense and that any statement or testimony given by him may be used as evidence against him in a subsequent trial by court-martial. If the witness is not subject to the Code, the foregoing information and advice should be given, but the phrase "any subsequent trial by court-martial" at the end of the warning should be modified as follows, "any subsequent trial." After being so informed, the right to refrain from testifying regarding the offense of which he is accused, suspected, or charged must be claimed by the witness. Despite assertion of such right, however, the witness may be questioned on matters other than the offense of which he is accused, suspected, or charged. (See paragraph (g)(3) of this section regarding waiver of the privilege against self-incrimination by the respondent.) The question of whether a witness is suspected of an offense and must, therefore, be advised in accordance with Article 31, UCMJ, is one for decision by the board and will depend upon the nature of the matter being considered by the board, the reasonable probability that an offense has been committed, and the reasonable probability that the witness was the offender. If the witness states that the answer to a question might tend to incriminate him, he will not be required to answer the question unless it clearly appears to the board that no answer he might make to the question could have that effect or unless the witness has waived the privilege against self-incrimination. The board shall resolve all reasonable doubt in favor of the witness. Each witness appearing before the board should be advised of the subject matter of the board's inquiry.

(6) *Warning the witness.* The board, in its discretion, may direct a witness not to discuss his testimony with other witnesses or persons who have no official interest in the matter until the board's proceedings are completed. This warning is given to insure that the matter before the board can be fairly heard and to eliminate the possibility that disclosures of the substance of the witness' testimony may influence, however, inadvertently, testimony of the witnesses still to be heard.

(7) *Oaths.* While an oath or affirmation to those persons personally appearing before the board as witnesses is required (except for any unsworn statement of the respondent), and while an oath or affirmation to a challenged member may be administered, no oath or affirmation is required for the members of the board, counsel, the recorder, the assistant recorder, or the reporter, if any. The oath or affirmation to be given a challenged member and to all witnesses will be in accordance with JAG Manual, section 0415, and will be administered by the recorder.

(8) *Authority of the chairman.* The chairman shall preserve order and decide upon matters relating to the routine business of the board. He may grant a continuance and recess, and may adjourn the board to meet at a time and a place most convenient and proper. The chairman's rulings are subject to objection by any voting member of the board. Motions or objections pertaining to any matter other than the admissibility of evidence to be considered by the board, and other than matters relating to continuances, recesses or adjournments, do not require a ruling by the chairman of the board, but should be heard and merely noted in the record for resolution thereof by the Discharge Authority. For example, a contention that a respondent is not subject to an administrative discharge because of the applicability of the provisions of § 730.54(e) will not be ruled upon by the chairman of the board, but will be resolved by the Discharge Authority. Should a voting member object to the chairman's ruling on any matter, a vote shall be taken in closed session and a decision of the majority shall govern. In case of a tie vote, the decision of the chairman shall govern, except as to challenges of members.

(9) *Eliciting further information.* Whenever it appears desirable to the members of the board that additional information be elicited or developed in the interest of clarifying any relevant matter, or otherwise for a proper hearing of the matters before the board, the chairman will so advise the recorder and may direct the calling of a witness, the pursuance of further lines of questioning, or the adducing of other evidence.

(10) *Security matters.* If any matter to be heard by the board requires a security clearance, and individual counsel for the respondent or other participants in the board's proceedings have not been granted such clearance, the convening authority shall be advised thereof; see OPNAV Instruction 5510.1C; and JAG Manual, section 0133b.

(11) *Sessions.* The board may be cleared at any time for deliberation or consultation, including final deliberations, whereupon the respondent, counsel, the recorder, the assistant recorder, and the reporter, if any, will withdrawn and only the voting members will be present. The open proceedings of the board will be open to the public unless the convening authority directs otherwise.

(12) *Challenges.* (i) The respondent may challenge any voting member of the board for cause only, e.g. that the member cannot approach the case with an open mind and impartiality. A challenged member will be given the right to make a statement with respect to the challenge. The board will not receive a challenge to more than one member at a time. After disclosing his grounds for challenge, the respondent may examine the member as to his competency to sit in that particular case. This examination may or may not be under oath, at the discretion of the respondent, and may be recorded verbatim or summarized, at the discretion of the chairman. The recorder and other members of the board may cross-examine the challenged member. After such examination and cross-examination, any other evidence bearing on the member's competency to sit may be heard.

(ii) The burden of persuasion in establishing the challenge is on the respondent. The challenged member withdraws when the board is cleared to determine the challenge. A majority vote in favor of sustaining the challenge, or a tie vote, disqualifies the challenged member. A member so disqualified shall be excused forthwith from further participation in the case. The board will decide the challenge according to a preponderance of the evidence. If a sustained challenge reduces the number of voting members actually present to less than three, the convening authority will be so informed, and the board will adjourn until the convening authority appoints such additional voting members as are necessary to bring the number of voting members actually present to at least three. See paragraph (b)(7) of this section. If the board membership actually present is not thereby reduced below three, the board will proceed with the hearing.

(13) *Excluded material and documents.* It is the responsibility of the recorder to insure that the board is presented only those materials and documents which may be properly considered by it. The following materials and documents will neither be provided to nor considered by administrative discharge boards in the evaluation of cases referred to them:

(i) Information concerning polygraph examinations, whether of the respondent or of others, including the results of such examinations, or the fact that the respondent may have declined such examination, unless this information is placed in issue before the board by the respondent. In the latter case, the board may make such inquiry into the polygraph examination as it deems necessary, including, but not limited to, the following:

(*a*) Requesting the agency which administered the examination, e.g., the ONI, or the Provost Marshal, to furnish a written report concerning the examination and the circumstances under which it was administered.

(*b*) Where circumstances of the examination are placed in dispute, the board may request the appearance of the polygraph examiner to provide testimony concerning the administration of the examination, his background and experience, his interpreta-

tion of the results of the examination, or such other information concerning the examination which the board may desire.

(ii) Contents of ONI or similar investigative reports which cannot be made available to the respondent or his counsel. Where an ONI or similar investigative report is received by the convening authority of an administrative discharge board, and the report contains matter which cannot be shown to the respondent and his counsel, the convening authority will cause a request to be made to the commanding officer of the locally cognizant Naval Investigative Service Office, or comparable investigative official, to permit the respondent and his counsel access to the report, or to furnish a re 1sume 1 of the report which can be made available to the respondent and his counsel. The purpose of this provision is to insure that the administrative discharge board considers only matters which are also available to the respondent and his counsel as well as the board. See paragraph (g)(4) of this section.

(14) *Attendance of witnesses.* (i) No authority exists for the issuance of a subpoena in connection with administrative discharge board proceedings. Accordingly, the appearance of all civilians and members of the Armed Forces not on active duty, as witnesses before the board, must be on a voluntary basis and at no expense to the Government. However, either the respondent or the Government may obtain the statements of, or may examine or cross-examine any absent witness, or any witness not available for the hearing, in any form which would render the consideration thereof by the board appropriate within the purview of paragraph (c)(1) of this section. The latter would include, but not be limited to, oral or written depositions, unsworn written statements, affidavits, or testimonial stipulations.

(ii) Before any civilian or member of the Armed Forces not on active duty is invited to appear as a witness before an administrative discharge board, he shall be clearly advised that his appearance before the board will be in performance of public service, since his appearance may not be compelled, and will be at no expense to the Government. Appendix 6 to SECNAV instruction 5521.6A, or revisions thereof, may be adapted for this purpose.

(iii) As prescribed by paragraph (b)(1) of this section, the recorder will be responsible for arranging for the attendance at the hearing of all material witnesses, except those whose attendance is arranged by the respondent. Where reasonably available, all witnesses, including those requested by the respondent, whose testimony would be material to the case, will be called to testify in person before the board. When in dispute, the materiality of a witness' testimony will be determined by the convening authority. In making this determination, the standards which are utilized in determining the materiality of a witness whose testimony is desired before a court-martial may be utilized. The reasonable availability of a material witness will be determined by the convening authority. Where the prospective witness is not within his command, the convening authority will effect appropriate liaison with the witness' commanding officer before determining the availability or nonavailability of the witness. A convening authority will be justified in determining that a witness is unavailable when any of the provisions of article 49(d) (1) through (3), Uniform Code of Military Justice, pertain. Testimony of active duty military personnel not in the immediate area, if needed, should, in most cases, be obtained and presented in the form of written statements.

(iv) Any expenses incident to the appearance of material witnesses on active duty with any of the Armed Forces before an administrative discharge board will be charged to the operation and maintenance allotment of the convening authority of the board.

(15) *Interviewing witnesses.* The respondent, the respondent's counsel, and the recorder have the right to an opportunity to interview a witness, regardless of whether or not that witness has previously testified.

(16) *Exclusion of witnesses.* Unless otherwise authorized by the chairman, all witnesses, other than the respondent, shall be excluded from the room

where the board is meeting, except when they are testifying.

(17) *Order of presenting evidence.* The testimony of witnesses and the presentation of other evidence will normally be in the following order: witnesses called and evidence presented by the recorder; witnesses called and evidence presented by respondent; witnesses called and evidence presented by the recorder in rebuttal; witnesses called and evidence presented by the respondent in surrebuttal; and witnesses called and evidence presented at the request of the board. The order of examining each witness is: Direct examination, cross-examination, redirect examination, recross-examination and examination by the board. The foregoing order of presentation and examination of witnesses need not be followed when the board, in the exercise of its sound discretion, feels that a deviation therefrom will secure a more effective presentation of evidence.

(18) *Final arguments.* The recorder and counsel for the respondent will be permitted to present final argument, if they so desire. The recorder has the right to make opening argument and, if argument is made on behalf of the respondent, the closing argument.

(19) *Burden of proof.* The burden of proof before administrative discharge boards with respect to:

(i) The separation of the respondent from the naval service, and (ii) such a separation with less than an honorable discharge; rests upon the Government. This burden never shifts. However, after the presentation of the Government's case, certain justifiable inferences which are adverse to the respondent may be drawn from the evidence by the Board, the convening authority and the Discharge Authority. In this latter instance, the burden of going forward with the evidence to avoid the adverse effect of these justifiable inferences may then shift to the respondent.

(20) *Standard of proof.* As to all matters before an administrative discharge board, the standard of proof is a preponderance of the evidence.

(21) *Weight and creditability of evidence.* The board will rely upon its own judgment and experience in determining the weight and credibility to be given material received in evidence.

(d) *Record of proceedings and report of the board.* (1) The record of proceedings of an administrative discharge board shall be prepared as directed by the convening authority and shall be authenticated by the signatures of the chairman and the recorder or, in the absence of either or both, by a member in lieu of the chairman, or by a member in lieu of the recorder. However, as a minimum, the record of proceedings shall contain:

(i) An authenticated copy of the appointing order and of any other communication(s) from the convening authority.

(ii) A summary of the testimony of all witnesses, including the respondent, appearing in person before the board.

(iii) A summary of the sworn or unsworn statements (of all absent witnesses), considered by the board.

(iv) The respondent's acknowledgment that he was advised of and fully understood all of his rights before the board.

(v) The identity of the counsel for the respondent and the nonvoting recorder, and their respective legal (or quasi-legal) qualifications.

(vi) Copies of those documents required by the applicable provisions of § 730.72.

(vii) Evidence of compliance with the provisions of §§ 730.50(c), 730.65(b)(1) and 730.66(c), where applicable.

(viii) A complete statement of the facts and circumstances, accompanied by appropriate supporting documents, upon which the recommendation for the respondent's administrative discharge is based.

(ix) A summary of any unsworn statements submitted by the respondent or his counsel, and

(x) Copies of all documents, not specifically listed above, and an accurate description of all real evidence, considered by the board in arriving at their findings, opinions (if any), and recommendations.

(2) The record of the board's proceedings shall be transmitted to the convening authority as part of the

board's report. Such report shall contain a verbatim record of the board's findings and recommendations, and, where required by the convening authority, a verbatim record of the board's opinions.

(i) The report of the board shall be based upon the concurrence of the majority of the voting members. If a member does not concur in the findings, opinions, or recommendations of the majority, he shall append his minority report to the record and state explicitly the parts of the majority report with which he disagrees and the reasons therefor. The minority report may also include additional findings of fact, opinions, or recommendations.

(ii) All concurring members shall sign the report of the board immediately under the findings of fact, opinions, and recommendations. In the case of a minority report, all members concurring therein shall sign the report in a manner similar to the signing of the majority report.

(3) See paragraph (g)(6) of this section with regard to the respondent's right to a copy of the board's report, or the board's proceedings, or any endorsements thereon.

(4) See paragraph (g)(7) of this section with regard to the notification to a respondent of the recommendations made by an administrative discharge board in his case.

(e) *Recommendations by the board.* The recommendations of the board, as required by paragraph (d)(2) of this section, will include a recommendation for one of the following alternative dispositions of the respondent.

(1) Retention, or

(2) Discharge: If the respondent's discharge is recommended, the general and specific bases therefor (e.g. by reason of unfitness because of an established pattern showing dishonorable failure to pay just debts), and the character and type of the discharge (e.g. lished pattern showing dishonorable with an undesirable discharge), will be specified. If the respondent's discharge is recommended, it is not appropriate for the board to further recommend that the discharge be suspended on probation, that nonjudicial punishment be imposed, or that court-martial proceedings be instituted.

(f) *Counsel for a respondent.* (1) Where, in an appropriate case, a member has not waived a hearing before an administrative discharge board or the right to be represented by counsel before that board, and the member is, under the provisions of this subpart, entitled to a board hearing, he is entitled to be represented by military counsel who shall be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice, unless the officer empowered to convene an administrative discharge board having jurisdiction over the member's case certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. See § 730.50(e)(10). Where such officer (convening authority) does not possess general court-martial jurisdiction over the respondent, he shall, before certifying the nonavailability of lawyer counsel, as contemplated herein, effect appropriate liaison with the officer who exercises general court-martial jurisdiction over the respondent. In every case where a certification of the nonavailability of lawyer counsel is made, such certification will include the reasons for the determination of nonavailability.

(2) Where the respondent desires to be represented by civilian counsel or is represented by military counsel of his choice, he may excuse any appointed military counsel.

(3) If the respondent desires to be represented by civilian counsel, the convening authority shall cause it to be clearly explained to the respondent that civilian counsel will not be provided at any expense to the Government. The respondent will be given a reasonable opportunity to obtain civilian counsel without unduly delaying the administrative discharge board proceedings. If undue delay appears likely, the convening authority may require the respondent to proceed without the desired civilian counsel. In this latter event, the convening authority will set forth the full circumstances thereof in the record, and will appoint available military counsel for

the respondent, or will permit the respondent to be represented by reasonably available military counsel of the respondent's choice.

(4) Where the respondent requests a specific military counsel of his own selection, whether or not such counsel is a lawyer within the meaning of article 27(b)(1), Uniform Code of Military Justice, and if the requested military counsel is reasonably available within the convening authority's command, such requested military counsel will normally be provided the respondent. Where requested military counsel is a member of a Marine Corps command not under the command of the convening authority, the convening authority will forward the respondent's request to the commanding officer of such requested military counsel, who will provide the requested counsel if he is reasonably available, or who will notify the convening authority of the unavailability of the requested counsel and the reasons therefor.

(5) In determining if lawyer counsel is reasonably available to be appointed to represent the respondent, the same standards will be applied as are applicable when an accused, who is to be tried by special court-martial, requests to be represented by lawyer counsel. In determining if a specific military counsel of the respondent's own choice is reasonably available, the same standards will be applied as are applicable when an accused, who is to be tried by special court-martial, requests to be represented by a specific military counsel. In determining whether undue delay in administrative discharge board proceedings appears likely to result from either the respondent's efforts to obtain a civilian counsel, or from the availability of such civilian counsel only at a future date which would unduly delay the board's proceedings, the same standards will be applied as are applicable when an accused to be tried by special court-martial desires to be represented by civilian counsel.

(6) Any necessary expenses incident to the authorized travel or per diem of a respondent's military counsel will be born by the operation and maintenance allotment of the convening authority.

(7) If counsel for the respondent is absent, the board shall not proceed until his return, or until new counsel for the respondent is retained by the respondent or appointed by the convening authority. However, the respondent may waive his right to have counsel present at the board's proceedings, provided the respondent understands his right to counsel and the effect of the waiver. The explanation of this right and any waiver thereof shall be reflected in the record.

(g) *Additional rights of the respondent.* In addition to the rights of the respondent which are specifically listed elsewhere in this subpart, a respondent who has not waived a hearing before an administrative discharge board, and whose case is presented to such board, has the following rights:

(1) Subject to his availability, i.e., not in civil confinement or on unauthorized absence, he may appear in person, with or without counsel, or in his absence be represented by counsel, at all open proceedings of the board. However, where the respondent has been on continuous unauthorized absence for more than 1 year, this provision is not applicable, since no administrative discharge board is required in such cases.

(2) He or his counsel, if any, will be notified a reasonable time in advance of the hearing before the board of the time and place of the board's meetings; of the names of all witnesses who are expected to be called to testify against him; and will be given an opportunity to examine all documents, reports, and other evidence which it is expected that the board will consider. This latter examination will be permitted to the same extent that a defense counsel representing an accused before a court-martial is permitted to examine the files and other material in the hands of the prosecution.

(3) He has the right, at his option, to submit or not submit to examination by the board. The provisions of article 31, Uniform Code of Military Justice, will apply. See paragraph (c)(5) of this section. However, if he elects to testify on his own behalf, he will be considered to have waived the protection accorded him by article 31 and he may be examined by the recorder or by the

board on any matters which are relevant to the board's proceedings, regardless of whether or not he testified to these matters on direct examination. Subject to the foregoing and the provisions of paragraph (c)(2) of this section, he may make or submit to the board any statements, sworn or unsworn, oral or written, on his own behalf.

(4) Subject to his availability and the provisions of paragraph (c)(14) of this section, he has the right to examine all witnesses personally appearing before the board to testify on his behalf, and the right to be confronted by and cross-examine all witnesses who personally appear before the board and testify against him. He or his counsel will be given a reasonable opportunity to cross-examine all absent witnesses whose statements are considered against him. This cross-examination may be accomplished by deposition, affidavit, correspondence, or any other means which will elicit answers or statements from the absent witness in a form acceptable to the board. While the reasonable opportunity for such cross-examination must be provided, the fact that an absent witness cannot be located, or is dead or physically incapacitated, or refuses to submit to such cross-examination, or does not reply to communications from the respondent or his counsel, will not, by itself, be a bar to the board's consideration of the absent witness' statements already in its possession. However, if the respondent or his counsel is not given a reasonable opportunity to cross-examine an absent witness whose statement is adverse to him because the witness is an unidentified informant whose name or location an investigative agency refuses to divulge to the respondent or his counsel, then neither the board nor the convening or Discharge Authority will consider the witness' statement in connection with the respondent's case. See paragraph (c)(13)(ii) of this section.

(5) He may at any time before the board convenes, or during the proceedings, introduce or submit any evidence, answer, deposition, sworn, or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(6) He shall not be entitled, as a matter of right, to a copy of the board's proceedings, or report, or any endorsements thereon. However, the convening authority or Discharge Authority may authorize the delivery to and retention by a respondent of a copy of the board's proceedings or report, or any endorsements thereon, or any part or summary thereof.

(7) Except as otherwise specifically provided herein, or except as otherwise directed by the convening authority or by the Discharge Authority, he shall not, as a matter of right, be entitled to be notified of the recommendations made in his case by an administrative discharge board or by the convening authority thereof.

(h) *Subsequent administrative discharge board proceedings.* (1) No member will be subjected to administrative discharge board action based upon conduct which has previously been the subject of administrative discharge board proceedings when the evidence before the subsequent board would be the same as the evidence before the previous board, except in those cases where the findings of the previous board favorable to the respondent are determined by the Discharge Authority to have been obtained by fraud or collusion, or except in those cases wherein the Discharge Authority finds legal prejudice to the substantial rights of the respondent. Evidence before a subsequent board is not the same as evidence before a previous board where it includes acts or omissions on the part of the member which have not been considered by the previous board, or where it includes administrative or judicial determinations made with regard to the member which have not been considered by the previous board and which are, pursuant to the provisions of this paragraph, competent for the subsequent board to consider.

(2) Conduct is considered to have previously been the subject of administrative discharge board proceedings when the previous board has submitted the record of its proceedings to the

Discharge Authority, which record includes one of the recommendations prescribed by paragraph (e) of this section.

(3) When a subsequent board is convened, no voting member of the subsequent board shall have served on a previous board as a voting member or have been the recorder or assistant recorder of a previous board which considered the same matter. However, the recorder and/or the assistant recorder of the previous board may serve as the recorder and/or assistant recorder of the subsequent board.

(4) The record of the proceedings and report of the previous board may be furnished the subsequent board. However, the subsequent board will not be furnished the findings, opinions or recommendations of the previous board, nor the matter contained in the previous board which was considered by the Discharge Authority to have been prejudicial to the substantial rights of the respondents, nor any matter determined by the Discharge Authority to have been obtained by fraud or collusion, nor the specific comments of the convening authority or Discharge Authority concerning the previous board. Such excluded matter should, however, be furnished the recorder of the subsequent board in order that he may ensure that such matter is not permitted to be injected into the subsequent proceedings. The subsequent board shall submit its findings, opinions (if required by the convening authority), and recommendations, de novo. However, the subsequent board may, in an appropriate case, base its findings of fact, opinions, and recommendations solely upon the evidence properly considered by the previous board, i.e., in cases in which the evidence before the subsequent board is the same as that before the previous board except for the evidence excluded as a result of the Discharge Authority's finding of legal prejudice to the substantial rights of the respondent, or his determination that the findings of the previous board were obtained by fraud or collusion.

(5) When a Discharge Authority sets aside the findings and recommendations of a previous board, pursuant to the provisions of this paragraph, and appoints a subsequent board to hear the respondent's case, no further action is required prior to the subsequent board's hearing of the respondent's case other than the appointment of the subsequent board; notifying the respondent and his counsel of the appointment of the subsequent board and the reasons for setting aside the findings and recommendations of the previous board; and giving the respondent and his counsel timely notice of the time and place of the subsequent board hearing, of the witnesses to be heard, and of the evidence to be considered before the subsequent board.

(6) Subject to the foregoing, the subsequent board's proceedings, and the rights of the respondent thereat, will be the same as if the subsequent board was initially hearing the respondent's case. The subsequent board's proceedings and report will be prepared, forwarded and acted upon in the same manner as if the subsequent board was initially hearing the respondent's case.

(7) If the Discharge Authority sets aside the findings and recommendations of an administrative discharge board because he finds legal prejudice to the substantial rights of the respondent and refers the case to a subsequent administrative discharge board, the Discharge Authority may not approve findings or recommendations of the subsequent board which are less favorable to the respondent than those rendered by the previous board. Where the Discharge Authority sets aside the findings and recommendations of a previous board because he determines that the findings thereof favorable to the respondent were obtained by fraud or collusion, and orders subsequent board proceedings, he is not bound to approve findings or recommendations of the subsequent board which are as favorable or more favorable to the respondent than those rendered by the previous board. In the latter case, however, the Discharge Authority will comply with the provisions of paragraph (i) of this section.

(i) *Action by the convening authority/discharge authority.* (1) The record of proceedings and the report of the board will be submitted to the conven-

ing authority. Where the convening authority is not the appropriate Discharge Authority, he will take such action with respect to the board's report as is prescribed in § 730.66(h)(1).

(2) Upon the receipt of the record of proceedings and report of the board, the Discharge Authority will refer such record and report to his staff legal officer for written review prior to taking his action thereon. See § 730.76. Upon completion of the foregoing, the Discharge Authority may take one of the following actions:

(i) Approve the board's recommendations and direct their execution.

(ii) Approve the board's recommendation for discharge and the general and specific bases therefor, but direct a change in the type and character of discharge recommended by the board to a more creditable one. For example, he may approve the board's recommendation that the respondent be discharged for the general basis of unfitness and for the specific basis of an established pattern of shirking, but disapprove the recommended undesirable discharge and direct the respondent's discharge with a general or honorable discharge. Except as provided by §§ 730.52 and 730.53, the Discharge Authority, in upgrading a recommended undesirable discharge, will not normally direct discharge with any more creditable type of discharge than is otherwise warranted by the respondent's military record. Under no circumstances shall the Discharge Authority direct the respondent's discharge with a less creditable type of discharge than that recommended by the board, e.g., he may not direct the respondent's discharge with a general discharge when the board has recommended discharge with an honorable discharge.

(iii) When the record indicates that such action would be appropriate, approve the board's recommendations for the respondent's discharge with the type and character of discharge recommended but direct that the general and specific bases of the recommended discharge be changed. See § 730.50(e)(13)(ii). For example, he may approve the board's recommendation that the respondent be discharged with a general discharge, but disapprove the recommendation that the general basis of the discharge be misconduct and that the specific basis for the discharge be conviction by civil authorities of an offense involving moral turpitude, and he may direct that the general basis of the discharge be changed to discharge for the convenience of the Government and that the specific basis for the discharge be changed to substandard personal behavior which reflects discredit upon the service.

(*a*) It is desirable that the Discharge Authority, in directing a change to the bases for a recommended discharge, specify both the general and specific bases therefor and the specific section, paragraph or subparagraph of this subpart applicable to the type of discharge he directs (e.g., discharge for the convenience of the Government because of substandard personal behavior—§ 730.61(a)(5) and SECNAV Instruction 1910.3, paragraph 3b(5)). However, where there is no specific subparagraph of this subpart which is applicable to the specific basis for the discharge, the Discharge Authority may merely specify the applicable general paragraph. For example, if the board recommends the respondent's discharge with a general discharge for the general basis of misconduct and for the specific basis of conviction by civil authorities of an offense involving moral turpitude, the Discharge Authority may direct the respondent's discharge with a general discharge, but may change the general basis therefor from misconduct to unsuitability and not specify a specific basis for the discharge. In this case, the authority cited for the discharge may be simply the general paragraph citation: § 730.65, since a conviction by civil authorities of an offense involving moral turpitude does not fall within the specific purview of any of the provisions of § 730.65(a)(1) through (7).

(*b*) The Discharge Authority may not direct a change in the general basis of the recommended discharge which is less favorable to the respondent, e.g., he may not direct that the general basis for the respondent's discharge be changed to unfitness or misconduct when the board has recom-

mended a discharge upon the general basis of unsuitability. See also §§ 730.50(e)(13)(ii) and 730.51(b).

(iv) Combine the alternative actions permitted by paragraphs (i)(2) (ii) and (iii) of this section, i.e., approve the board's recommendation for the respondent's discharge, but direct that the recommended type and character of the discharge be changed to a type and character more favorable to the respondent, and that the recommended bases therefor be changed to bases more favorable to the respondent. For example, if the board recommends that the respondent be discharged with an undesirable discharge with a general basis of unfitness and a specific basis of an established pattern for shirking, the Discharge Authority may approve the respondent's discharge, but may direct that the type of the discharge be changed to a general discharge; that the general basis therefor be changed to unsuitability; and that the specific basis therefor (depending upon the circumstances) be changed to either character and behavior disorders, or apathy, defective attitudes, and inability to expend effort constructively.

(v) Approve the board's recommendation for the respondent's discharge, with the type and bases therefor recommended by the board, or with a more favorable type and/or bases, but suspend the execution of the approved discharge for a specified period of probation in accordance with the provisions of § 730.75.

(vi) Disapprove the board's recommendation for discharge and direct that the respondent be retained in the service.

(vii) Disapprove the board's recommendation for the respondent's retention in the service and direct that the respondent be discharged with the type of discharge and the bases therefor warranted by the circumstances of the case. In this event, however, the Discharge Authority may not direct the member's discharge with an undesirable discharge, i.e., the directed discharge must be with honor, or under honorable conditions, with either an honorable or general discharge, as warranted by the circumstances.

(viii) Set aside the findings and recommendations of the board and refer the respondent's case to a subsequent board in accordance with the provisions of paragraph (h) of this section.

(3) When final action is taken by a Discharge Authority, other than the Commandant of the Marine Corps or the Secretary of the Navy, on any recommendation for discharge by reason of unsuitability in the case of a member with 8 or more years of continuous active duty, or on any report of misconduct or recommendation for discharge by reason of unfitness (regardless of whether or not administrative board action was taken with respect thereto), all papers shall be forwarded to the Commandant of the Marine Corps (Code DK) for review. See §§ 730.54(h) and 730.65(d). These papers shall include the signature of the Discharge Authority recording the final action taken in the case and the date thereof.

(1 CFR 18.14, and Part 21, Subpart B)

[31 FR 16528, Dec. 28, 1966, as amended at 45 FR 8600, Feb. 8, 1980]

§ 730.74 Summary of cases in which administrative discharge board proceedings are required and of cases in which an administrative discharge may be effected without board proceedings.

(a) *Board proceedings required.* An administrative discharge may not be effected without administrative discharge board proceedings in the following cases:

(1) Where a member is recommended for discharge under other than honorable conditions, or a member with 8 or more years of continuous active duty is recommended for discharge by reason of unsuitability, and:

(i) The member does not waive, in writing, as prescribed elsewhere in this subpart (see § 730.72), the right to present his case before an administrative discharge board, or,

(ii) The member waives, in writing, as prescribed elsewhere in this subpart (see § 730.72), the right to present his case before an administrative discharge board, but such waiver is disapproved by the Discharge Authority who directs reference of the member's

case to an administrative discharge board.

(2) Where a member is recommended for a discharge for security reasons within the purview of Part 729 of this chapter and, pursuant thereto, proceedings before Security Boards are required.

(b) *Discharge may be effected without board proceedings.* An administrative discharge may be effected without administrative discharge board proceedings in the following cases:

(1) Where a member is recommended for discharge under other than honorable conditions, or a member with 8 or more years of continuous active duty is recommended for discharge by reason of unsuitability, and:

(i) The member is beyond military control by reasons of a continuous established unauthorized absence of more than 1 year, provided the provisions of §§ 730.54(c)(1), 730.72(a) (2)(ii) and (4) have been complied with; or

(ii) In a case where a member requests discharge for the good of the service within the purview of § 730.70, and provided the provisions of §§ 730.70(a), 730.72(a) (1) and (3) have been complied with; or

(iii) In a case where the member waives his right to board action under the conditions prescribed elsewhere in this chapter and such waiver is not disapproved by the Discharge Authority.

(2) In any case where a member is recommended and processed for an honorable or general discharge, pursuant to the provisions of §§ 730.58 and 730.60 through 730.65, inclusive, except for those cases where a member with 8 or more years of continuous active duty is recommended for discharge by reason of unsuitability. In the latter cases, the provisions of paragraph (a) or (b)(1) of this section apply.

§ 730.75 Suspension of execution and vacation of suspension of approved administrative discharges.

(a) *Authority.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction may, prior to the expiration of a member's enlistment or period of obligated active service, suspend the execution of any approved administrative discharge for a specified period of probation, not to exceed 1 year, if the circumstances in a case indicate a reasonable prospect for the member's rehabilitation. If a period of suspension in excess of 1 year is desired, permission therefor will be requested from the Commandant of the Marine Corps (Code DK). Such suspension may be conditioned upon the member's approved request for an extension of his enlistment or period of obligated active duty. During the period of suspension, the member will be afforded an opportunity to demonstrate that he is qualified for retention in the service, i.e., that he is capable of behaving properly for an extended period under varying conditions, and that he can perform his assigned duties efficiently. In determining whether or not to suspend the execution of an approved administrative discharge, such factors shall be considered, among other appropriate criteria, as: The member's maturity, the sincerity of the member's service motivation, the member's potential value to the Marine Corps, and the degree of risk of unsatisfactory performance in a continued term of service.

(b) *Service record entries.* The following actions will be recorded on page 11 of the member's service record book:

(1) The action initially suspending the execution of an approved administrative discharge, together with the date the specified period of suspension will be automatically remitted unless sooner vacated.

(2) Any subsequent action extending the initial period of suspension, together with the date such extended period of suspension will be automatically remitted unless sooner vacated. See paragraph (m) of this section.

(3) The action taken to vacate a suspended administrative discharge, and the ordering of its execution or the execution of a more favorable discharge in lieu thereof.

(c) *Automatic remission.* Except as provided by paragraphs (i) and (j) of this section, upon the expiration of the probationary period (i.e., the period of suspension or of any extension thereof), or upon the expiration

of the member's enlistment or period of obligated active service, whichever occurs earlier, unless the suspension is sooner vacated the unexecuted administrative discharge will be automatically remitted.

(d) *Basis for actions.* Additional misconduct or other act(s) or omission(s) which constitute substandard performance of duty, or which demonstrate(s) characteristics of unfitness or unsuitability on the part of the member occurring during the probationary period or extensions thereof, may establish the basis for one or more of the following actions, as may be appropriate:

(1) Either punitive action under the Uniform Code of Military Justice, or new administrative action. Except where alleged violations of probation are required by paragraph (f) of this section to be reported to the Commandant of the Marine Corps for final determination, either of these actions may be initiated and finally completed, notwithstanding the originally suspended administrative discharge. However, see paragraph (e) of this section and §§ 730.51 (m) through (o) and 730.54(e).

(2) Vacation of the suspended administrative discharge and the ordering of its execution, or the execution of a more favorable discharge in lieu thereof.

(3) Retention of the member, despite a violation of his probation, and either continuing the member's original period of probation or extending the original period of probation beyond its normal expiration date for any subsequent period not to exceed 1 year. If an extension of the original period of probation is desired for a subsequent period in excess of 1 year, permission therefor will be requested from the Commandant of the Marine Corps (Code DK).

(e) *Report.* Where a commanding officer or officer in charge does not exercise special court-martial jurisdiction over a member whose approved administrative discharge has been suspended on probation, he shall make a report of a suspected or apparent violation of probation on the part of the member to the Marine officer next in the chain of command exercising special court-martial jurisdiction over the member. Included in this report will be all relevant and material documentary evidence pertaining to the case and the commander's specific recommendation for one or more of the actions described in paragraph (d) of this section. See paragraph (l)(1) of this section when a hearing is required prior to vacation of a suspended administrative discharge. Care should be taken in making any recommendation for punitive action under the Uniform Code of Military Justice, that in acting thereon, the officer exercising special court-martial jurisdiction, the officer exercising general court-martial jurisdiction, or higher authority, does not become an accuser, within the meaning of the Uniform Code of Military Justice, article 1(9). See Manual for Courts-Martial, 1951, Chapter VII. See also § 730.51(n). After taking the action prescribed by paragraph (l) of this section and/or any other action appropriate in the case, the commander exercising special court-martial jurisdiction over the member will forward the case, with his recommendations thereon, to the Marine commander exercising general court-martial jurisdiction over the member. Upon receipt of the report described above in this paragraph, the Marine commander exercising general court-martial jurisdiction over the member shall take one or more of the following actions, as may be appropriate:

(1) Determine that no violation of probation has occurred and take no action in consequence thereof, continuing the member's original period of probation.

(2) Return the entire report to the officer exercising special court-martial jurisdiction over the member concerned for whatever action such officer deems appropriate.

(3) Take or cause to be taken appropriate action pursuant to Manual for Courts-Martial, 1951, paragraph 35.

(4) Determine that a violation of probation has occurred and, provided the prerequisite safeguards have been met and the prerequisite proceedings required by this subpart have been completed.

(i) Authorize or direct the action permitted by paragraph (a) (2) or (3)

of this section where he is, pursuant to paragraph (f) of this section, empowered to take such action.

(ii) Authorize or direct the appropriate discharge of the member as a result of new administrative action taken pursuant to paragraph (d)(1) of this section.

(5) Forward the report, together with such other matters as are required by paragraph (f) of this section, to the Commandant of the Marine Corps (Code DK or Code DMB, as appropriate) for disposition.

(f) *Limitation.* Only a Discharge Authority competent to initially authorize or direct the type of administrative discharge which has been suspended, and to initially authorize or direct an administrative discharge as a result of the act(s) or omission(s) which are the basis for the member's alleged violation of probation, may vacate a suspended administrative discharge, or direct the retention of a member despite a violation of his probation. Where the Discharge Authority competent to initially authorize or direct the type of administrative discharge which has been suspended is the Commandant of the Marine Corps or the Secretary of the Navy, or where a member's alleged violation of probation consists of act(s) or omission(s) for which the authority to authorize or direct any administrative discharge is reserved to the Commandant of the Marine Corps or the Secretary of the Navy, the Marine commander exercising general court-martial jurisdiction over the member, or the member's commanding officer when the member is not under the command of a Marine commander exercising general court-martial jurisdiction, will forward a full report of the member's alleged violation of probation, together with all documentary evidence pertaining thereto, and his recommendation as to whether or not the suspended discharge should be vacated, to the Commandant of the Marine Corps for final disposition thereof. In the event that the hearing provided for by paragraph (l) of this section is required before vacation of the suspended discharge may be ordered, the full report of this hearing will be forwarded to the Commandant of the Marine Corps, together with the other documents required by this paragraph.

(g) *Condition for vacation of suspension.* Vacation of a suspended administrative discharge and the ordering of its execution, as authorized by paragraph (d)(2) of this section, will not be effected unless the vacation is based upon additional misconduct, or other acts or omissions which constitute substandard performance of duty, or which demonstrate characteristics of unfitness or unsuitability on the part of the member during the probationary period, which, when considered in the light of the member's entire military record during his current enlistment or period of obligated active service, including voluntary or involuntary extensions thereof, clearly demonstrates that the member is unqualified for retention.

(h) *Types of cases in which suspension may be vacated.* Where a member, whose approved administrative discharge has been suspended on probation, allegedly violates such probation and, as a consequence thereof, punitive action or new administrative action is initiated which does not result in the execution of a finally approved punitive or administrative discharge, vacation of the previously suspended administrative discharge and its subsequent execution may nevertheless be effected. The provisions of §§ 730.54(e) and 730.73(h) do not here apply, inasmuch as the administrative discharge resulting from the vacation proceedings is not a discharge based upon the member's act(s) or omission(s) which occasioned the vacation proceedings, but is, in effect, the original discharge which was initially approved and then subsequently suspended. Further, a suspended administrative discharge may be vacated notwithstanding the fact that a member may be in a disciplinary status. In making this decision, the commanding officer or the convening authority or the Discharge Authority will insure that by his actions or decisions in this regard he does not thereby become an accuser. See paragraph (e) of this section.

(i) *Expiration of enlistment.* Unless prior to the expiration of a member's enlistment or period of obligated

active service, including voluntary or involuntary extensions thereof, appropriate action is taken pursuant to Manual for Courts-Martial, 1951, paragraph 11d and UCMJ Article 2(1), to effect a continuation of jurisdiction under the Uniform Code of Military Justice over the member, a member whose approved administrative discharge has been suspended on probation and who violates such probation as described herein, may not, because of such violation of probation, be retained on active duty for the purpose of vacating the suspended administrative discharge. In these cases the member will be separated with an honorable or general discharge, as warranted by his military record, in accordance with the provisions of § 730.52 or § 730.53.

(j) *Expiration of probationary period.* Except as provided in paragraph (i) of this section, a suspended administrative discharge may be vacated within a reasonable time after the expiration of the period of suspension where appropriate vacation action cannot be initiated and completed before the expiration of the period of suspension. See, however, paragraph (k) of this section. Examples, which are not inclusive, of the applicability of this provision are cases in which the command fails to discover a member's violation of probation until after the expiration of the period of suspension; or in which a violation of probation, even though discovered, occurs too close to the expiration of the period of suspension to permit the initiation and completion of appropriate vacation action within such period.

(k) *Execution of administrative discharge.* Except as provided by paragraph (l) of this section, where a member, whose approved administrative discharge has been suspended on probation, violates such probation, as described herein, appropriate Discharge Authority may vacate the suspended administrative discharge and order its execution without further hearing or formal proceedings:

(1) When the member has been beyond military control for 15 or more consecutive days. In this event, the discharge may be executed in absentia. See particularly §§ 730.101(b) and 730.105.

(2) When the member has not been beyond military control for 15 or more consecutive days, but the suspended discharge is other than:

(i) An undesirable discharge, or

(ii) A discharge for reason of unsuitability in the case of a member with 8 or more years of continuous active military service.

(l) *Procedure for vacation of suspension of undesirable discharge and certain other cases.* Where a member, whose approved administrative discharge has been suspended on probation, violates such probation, as described in this section, and the suspended discharge is either an undesirable discharge, or a discharge for reason of unsuitability in the case of a member with 8 or more years of continuous active military service, appropriate Discharge Authority may vacate the suspension of such discharge and order execution of the discharge only in accordance with the following procedure:

(1) Upon receipt of a report that a member has allegedly violated his probationally suspended administrative discharge, the Marine commander exercising special court-martial jurisdiction over such member will hold or cause to be held a hearing on the alleged violation of probation. Where the Marine commander exercising special court-martial jurisdiction over the member does not personally conduct such hearing, he shall appoint, as the hearing officer, an officer of the grade of major/lieutenant commander or higher, unless he certifies in the permanent record the nonavailability of an officer of such grade, together with the reasons for such nonavailability.

(2) This hearing will be in the nature of a "show cause" proceeding. That is, the respondent will be given an opportunity to show cause why his alleged violation of probation should not result in the vacation of the suspended administrative discharge and the ordering of its execution. The respondent will be afforded an opportunity to be represented at this hearing by counsel, as defined in § 730.50(e)(10).

(3) The Marine commander exercising special court-martial jurisdiction over the member will submit the report of the hearing, together with his appropriate recommendations thereon, to the Marine commander exercising general court-martial jurisdiction over the member. Unless otherwise provided by the commander exercising general court-martial jurisdiction over the member, the member is not entitled to be furnished a copy of the hearing report or the endorsements thereon.

(4) The Marine commander exercising general court-martial jurisdiction over the member will take whatever action he deems appropriate and which he is empowered to take with regard to the alleged violation of probation. See paragraphs (d), (e), and (f) of this section.

(m) *Interruption of running of probationary period.* The running of any period of suspension of an administrative discharge, or extension thereof, will be interrupted by any occasion, event, occurrence or act which would interrupt the running of a period of suspension in the case of a sentence adjudged by a court-martial. See paragraph (b)(2) of this section and section 0129 of the Manual of the Judge Advocate General.

(n) *Honorable or general discharge.* Regardless of the type of administrative discharge which has been suspended, any Discharge Authority competent to vacate its suspension and order its execution may, in lieu of the execution of the specific suspended discharge being vacated, authorize or direct the member's discharge with an honorable or general discharge, as warranted by the member's military record, in accordance with the provisions of § 730.52 or § 730.53.

(1 CFR 18.14, and Part 21, Subpart B)

[31 FR 16528, Dec. 28, 1966, as amended at 45 FR 8600, Feb. 8, 1980]

§ 730.76 Action by the Staff Legal Officer.

(a) *Review.* Prior to taking his action with regard to—

(1) The report of any administrative discharge board, or

(2) A report of misconduct, a recommendation for discharge by reason of unfitness, or a request for discharge for the good of the service, which has not been the subject of administrative discharge board proceedings; or

(3) Any administrative discharge matter which, under the provisions of this Chapter, is forwarded to the Commandant of the Marine Corps for advice or final disposition,

a Discharge Authority shall cause the case to be reviewed by his Staff Legal Officer. A Discharge Authority may refer any other administrative discharge matter to the Staff Legal Officer for review.

(b) *Procedure.* The original or a signed copy of the Staff Legal Officer's review will be attached to the record of the case which is forwarded to the Commandant of the Marine Corps, whether so forwarded for advice, or final disposition, or review and retention. The form and content of the Staff Legal Officer's review will be as required by the Discharge Authority. Normally a typed, stamped, or printed statement that the proceedings have been reviewed and found sufficient in law and in fact will constitute an adequate Staff Legal Officer's review as contemplated herein. If the Staff Legal Officer does not find the administrative discharge proceedings to be correct in law and fact, he should briefly set forth the facts and reasoning leading to such determination.

§ 730.77 Conscientious objectors.

(a) *Scope.* Procedures herein apply to all commissioned officers, warrant officers, and enlisted personnel in the Marine Corps and Marine Corps Reserve.

(b) *Definitions.* (1) *Conscientious objection.* A firm, fixed, and sincere objection to participation in war in any form, or the bearing of arms, by reason of religious training and belief.

(2) *Class 1-O conscientious objector.* A member who, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.

(3) *Class 1-A-O conscientious objector.* A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are

such as to permit military service in a noncombatant status.

(4) *Religious training and belief.* Belief in an external power or being or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well being. The external power or being need not be of an orthodox deity, but may be a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of another, or, in the case of deeply held moral or ethical beliefs, a belief held with the strength and devotion of traditional religious conviction. The term "religious training and belief" may include solely moral or ethical beliefs even though the applicant himself may not characterize these beliefs as "religious" in the traditional sense, or may expressly characterize them as not religious. The term "religious training and belief" does not include a belief which rests solely upon consideration of policy, pragmatism, expediency, or political views.

(5) *Noncombatant service or noncombatant duties.* (i) Any assignment the primary function of which does not require the use of arms in combat provided that such other assignment is acceptable to the individual concerned and does not require him to bear arms or to be trained in their use.

(ii) Service aboard an armed ship or aircraft or in a combat zone shall not be considered to be combatant duty unless the individual concerned is personally and directly involved in the operation of weapons.

(6) *Noncombatant training.* Any training which is not concerned with the study, use or handling of arms or weapons.

(c) *Policy.* (1) Conscientious objection does not exempt marines from active military service. However, as indicated by provisions of 50 App. U.S.C. 456(j) and related statutes, it is more essential to respect a man's religious beliefs than to force him to serve in the Marine Corps and accordingly a person having bonafide religious objection to participation in war in any form (1-O classification) shall not be inducted/enlisted into the Marine Corps.

(2) The administrative discharge of Marines on active duty prior to the completion of an obligated term of service for reasons of conscientious objection shall be at the discretion of the Commandant of the Marine Corps and will be determined by a judgment of the facts and circumstances. However, a request for classification as a conscientious objector and relief from or restriction of military duties in consequence thereof will be approved to the extent practicable and equitable within the following limitations:

(i) Except as provided for in this order, no Marine who possesses conscientious objection beliefs before entering military service is eligible for classification as a conscientious objector if he failed to request classification as a conscientious objector by the Selective Service System or if a request for classification as a conscientious objector was disapproved by the Selective Service System and a subsequent request is based upon essentially the same grounds, or supported by essentially the same evidence as the request denied by the Selective Service System.

(ii) A Marine who possessed conscientious objector beliefs prior to entering the Marine Corps is eligible for classification as a conscientious objector if:

(*a*) Such beliefs crystalized after receipt of induction notice/enlistment;

(*b*) He could not request classification as a conscientious objector by the Selective Service System because of Selective Service regulations prohibiting the submission of such requests after receipt of induction notice.

(3) Individuals inducted into the Marine Corps under 1-A-O Selective Service classification will be assigned to noncombatant duties. Marines in this category will be required by the commanding general of the appropriate recruit training depot to sign and date a statement as set forth in paragraph (c)(1) of this section. The original copy will be included in the Marine's service record book and a copy forwarded to the Commandant of the Marine Corps (code DG).

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(4) The Commandant of the Marine Corps (code DF) will be notified when:

(i) Inducted Marines claim to have been classified as conscientious objectors by the Selective Service System, but records do not so indicate, or

(ii) Inducted Marines claim they were erroneously denied Selective Service classification as conscientious objectors.

(5) In those circumstances cited in paragraph (c)(4) of this section upon receipt of notification that the individuals claim to have been classified as a conscientious objector or erroneously denied such classification by the Selective Service System, the Commandant of the Marine Corps will contact the Selective Service System to resolve such conflict.

(d) *Criteria.* (1) General: The criteria set forth herein provided policy and guidance in considering applications for separation or for assignment to noncombatant training and service based on conscientious objection.

(2) Consistent with the national policy to recognize the claims of bona fide conscientious objectors in the military service, an application for classification as a conscientious objector may be approved (subject to the limitations of paragraph (c)(2) of this section) for any Marine:

(i) Who is conscientiously opposed to participation in war in any form;

(ii) Whose opposition is founded on religious training and belief; and

(iii) Whose position is sincere and deeply held.

(3) The clause "war in any form" will be interpreted in the following manner:

(i) An individual who desires to choose the war in which he will participate is not a conscientious objector under the law. His objection must be to all wars rather than a specific war;

(ii) A belief in a theocratic or spiritual war between the powers of good and evil does not constitute a willingness to participate in "war" within the meaning of this order.

(4) Religious training and belief:

(i) In order to find that an applicant's moral and ethical beliefs are against participation in war in any form and are held with the strength of traditional religious convictions, the applicant must show that these moral and ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly found in traditional religious convictions. In other words, the belief upon which conscientious objection is based must be the primary controlling force in the applicant's life.

(ii) A primary factor to be considered is the sincerity with which the belief is held. Great care must be exercised in seeking to determine whether asserted beliefs are honestly and genuinely held. Sincerity is determined by an impartial evaluation of the applicant's thinking and living in its totality, past and present. Care must be exercised in determining the integrity of belief and the consistency of application. Information presented by the claimant should be sufficient to convince that the claimant's personal history reveals views and actions strong enough to demonstrate that expediency or avoidance of military service is not the basis of his claim. Therefore, in evaluating applications the conduct of applicants, in particular their outward manifestation of the beliefs asserted, will be carefully examined and given substantial weight.

(iii) Relevant factors that should be considered in determining an applicant's claim of conscientious objection include: Training in the home and church; general demeanor and pattern of conduct; participation in religious activities; whether ethical or moral convictions were gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated; credibility of the applicant; and credibility of persons supporting the claim.

(iv) Particular care must be exercised by individuals processing applications not to deny the existence of bona fide beliefs that are incompatible with one's own.

(v) Church membership or adherence to particular theological tenets are not required to warrant separation or assignment to noncombatant train-

ing and service for conscientious objectors.

(vi) Mere affiliation with a church or other group which advocates conscientious objection as a tenet of its creed is not necessarily determinative of an applicant's position or belief.

(vii) Conversely, affiliation with a church or group which does not teach conscientious objection does not necessarily rule out adherence to conscientious objection beliefs in any given case.

(viii) Where an applicant is or has been a member of a church, religious organization, or religious sect, and where his claim of conscientious objection is related to such membership, inquiry may properly be made as to the fact of membership, and the teaching of the church, religious organization, or religious sect, as well as the applicant's religious activity. However, the fact that the applicant may disagree with, or not subscribe to, some of the tenets of his church does not necessarily discredit his claim. The personal convictions of each individual will be controlling so long as they derive from his moral, ethical, or religious beliefs.

(ix) Moreover, an applicant who is otherwise eligible for conscientious objector status may not be denied that status simply because his conscientious objection influences his views concerning the Nation's domestic or foreign policies. The task is to decide whether the beliefs professed are sincerely held, and whether they govern the claimant's actions both in word and deed.

(5) The burden of establishing a claim of conscientious objection as a ground for separation or assignment to noncombatant training and service is on the applicant. To this end, he must establish by clear and convincing evidence that the nature or basis of his claim comes within the definition of and criteria prescribed herein for conscientious objection and that his belief in connection therewith is honest, sincere, and deeply held. The claimant has the burden of determining and setting forth the exact nature of his request, i.e., whether for separation based on conscientious objection (1-O) or for assignment to noncombatant training and service based on conscientious objection (1-A-O).

(6) An applicant claiming 1-O status shall not be granted 1-A-O status as a compromise.

(7) Provisions of this order will not be used to effect administrative separations of Marines who do not qualify as conscientious objectors, or in lieu of administrative separations otherwise set forth in this part (MCOP 1900.16). Marines determined not qualified for conscientious objector status, but the separation of whom would otherwise appear to be in the interest of the Marine Corps will be considered for administrative separation under the provisions of this part (MCOP 1900.16).

(e) *Procedures.* (1) A Marine who seeks either separation or assignment to noncombatant duties by reason of conscientious objection will submit an application therefor. The application will indicate whether he is seeking a discharge or assignment to noncombatant duties and will include the following items:

(i) The personal information required by enclosures (2) and (3).[1]

(ii) Any other items which the applicant desires to submit in support of his case.

(2) Prior to processing the application of the individual, he will be advised of the specific provisions of 38 U.S.C. 3103 regarding the possible effects of discharge as a conscientious objector who refuses to perform military duty or refuses to wear the uniform or otherwise to comply with lawful orders, and required to execute the statement contained in enclosure (3).[1]

(3) The applicant shall be personally interviewed by a chaplain who shall submit a written opinion as to the nature and basis of the applicant's claim, and as to the applicant's sincerity and depth of conviction. "The chaplain's report shall include specific reasons for his conclusions." In addition, the applicant will be interviewed by a psychiatrist (or by a medical officer if a psychiatrist is not reasonably available) who shall submit a written

[1] Filed as part of the original document.

report of psychiatric evaluation indicating the presence or absence of any psychiatric disorder which would warrant treatment or disposition through medical channels, or such character or personality disorder as to warrant recommendation for appropriate administrative action. This opinion and report will become part of the application. If the applicant refuses to participate or is uncooperative or unresponsive in the course of the interviews, this fact will be included in the statement and report filed by the chaplain and psychiatrist or medical officer.

(4) The commander exercising special court-martial jurisdiction over the applicant, will appoint an officer in the grade of O-3 or higher, knowledgeable in policies and procedures relating to conscientious objector matters, to investigate the applicant's claim. The officer so appointed will not be an individual in the chain of command of the applicant. If the applicant is a commissioned officer, the investigating officer must be senior in both temporary and permanent grades to the applicant.

(5) Upon appointment, the investigating officer will review the applicable Marine Corps regulations. During the course of his investigation, the investigating officer will obtain all necessary legal advice for the local staff judge advocate or legal officer. As part of his investigation, the investigating officer will seek information from commanders, supervisors, records, and any other sources which may contribute to his final recommendation. Whenever possible, information so obtained will be presented to the applicant at the hearing.

(6) The investigating officer will conduct a hearing on the application. The purpose of the hearing is to afford the applicant an opportunity to present any evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority.

(i) If the applicant desires, he shall be entitled to be represented by counsel, at his own expense, who shall be permitted to be present at the hearing, assist the applicant in the presentation of his case, and examine all items in the file.

(ii) Should the applicant refuse to make a statement, orally or in writing during the conduct of the hearing, he will submit a signed statement in his own handwriting that he has been afforded the opportunity at the hearing to appear in person, with counsel retained by him, if desired, and that he refuses to make a statement.

(iii) In this regard, any failure or refusal of the applicant to submit to questioning under oath or affirmation before the investigating officer may be considered by the officer making his recommendation and evaluation of the applicant's claim.

(iv) If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance.

(v) The hearing will be informal in character and will not be governed by the rules of evidence employed by courts-martial except that all oral testimony presented shall be under oath or affirmation. Any relevant evidence may be received. Statements obtained from persons not present at the hearing need not be made under oath or affirmation. The hearing is not an adversary proceeding.

(vi) The applicant may submit any additional evidence that he desires (including sworn or unsworn statements) and present any witnesses in his own behalf, but he shall be responsible for securing their attendance. Commanders will render all reasonable assistance in making available military members of his command requested by the applicant as witnesses. Further, the applicant will be permitted to question any other witnesses who appear and to examine all items in the record.

(vii) A verbatim record of the hearing is not required. If the applicant desires such a record and agrees to provide it at his own expense, he may do so. If he elects to provide such a record, he shall make a copy thereof available to the investigating officer,

at no expense to the Government, at the conclusion of the hearing. In the absence of a verbatim record, the investigating officer will summarize the testimony of witnesses and permit the applicant or his counsel to examine the summaries and note for the record their differences with the investigating officer's summary. Copies of statements and other documents received in evidence will be made a part of the hearing record. The investigating officer has the responsibility for authenticating the hearing record. His version is final as to the record of the testimony of the witnesses.

(7) At the conclusion of the investigation, the investigating officer will prepare a written report which will contain the following:

(i) A statement as to whether the applicant appeared, whether he was accompanied by counsel, and, if so, the latter's identity, and whether the nature and purpose of the hearing were explained to the applicant and understood by him.

(ii) Any documents, statements, and other material received during the investigation.

(iii) Summaries of the testimony of the witnesses presented (or a verbatim record of the testimony if such record was made).

(iv) A statement of the investigating officer's conclusion as to the underlying basis of the applicant's conscientious objection and the sincerity of the applicant's beliefs, including his reasons for such conclusions.

(v) The investigating officer's recommendation for disposition of the case, including his reasons therefor (insure compliance with paragraph (d)(7) of this section. The actions recommended will be limited to the following:

(*a*) Denial of any classification as a conscientious objector; or

(*b*) Classification as 1-A-O conscientious objector; or

(*c*) Classification as 1-O conscientious objector.

(vi) The investigating officer's report, along with the individual's application, all interviews with chaplains or doctors, evidence received as a result of the investigating officer's hearing, and any other items submitted by the applicant in support of his case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearings. A copy of the record will be furnished to the applicant at the time it is forwarded to the commander who appointed the investigating officer, and the applicant will be informed that he has the right to submit a rebuttal to the report within 7 days.

(8) The record of the case will be forwarded to the headquarters of the officer who appointed the investigating officer where it shall be reviewed for completeness and legal sufficiency. If necessary, the case may be returned to the investigating officer for further investigation. When the record is complete, the commanding officer who appointed the investigating officer shall forward it with his personal recommendation for disposition and the reasons therefor, through the appropriate chain of command, to the Commandant of the Marine Corps (code DF) for determination of action. Each officer in the chain of command will provide a specific recommendation.

(9) The commanding officer providing the final endorsement will, prior to forwarding the application to the Commandant of the Marine Corps, furnish the applicant a copy of any material he has not seen plus any forwarding endorsements containing recommendations. The applicant will be informed that he has the right to submit a rebuttal to the additional material within 7 days. The applicant's comments will be attached to the report or a statement will be made in the forwarding endorsement that he elected not to comment or did not comment within the allotted 7 days.

(10) A final decision based on the entire record will be made at Headquarters Marine Corps. Any additional information other than the official service record of the applicant considered which is adverse to the applicant, and which the applicant has not had an opportunity to comment upon or refute will be made a part of the record and the applicant shall be given an opportunity to comment upon or refute the material before a final decision is made. The reason for an ad-

verse decision will be made a part of the record and will be provided to the individual.

(11) Processing of applications need not be abated by the unauthorized absence of the applicant subsequent to the initiation of the application, or by the institution of disciplinary action or administrative separation proceedings against him. However, an applicant whose request for classification as a conscientious objector has been approved will not be discharged until all disciplinary action has been resolved.

(12) To the extent practicable under the circumstances, during the period applications are being processed and until a decision is made at Headquarters Marine Corps, every effort will be made to assign applicants to duties within the command to which they are assigned which will conflict as little as possible with their asserted beliefs.

(13) If a Marine has made application prior to receiving PCS orders, he will be retained at his command pending final decision of his application. The Commandant of the Marine Corps (code DF) will be notified of this action and commanders will request advice relative to the PCS orders issued. A Marine who desires to apply for conscientious objector status subsequent to receiving PCS orders will comply with the reassignment orders issued.

(14) During the period applications are being processed, applicants will be expected to conform to the normal requirements of the command and perform satisfactorily such duties as they may be assigned. Applicants may be disciplined for violations of the Uniform Code of Military Justice while awaiting action on their applications.

(15) A Marine reservist ordered to involuntary active duty will report as ordered, unless his application for conscientious objector status was made prior to the receipt of notification of his commanding officer's intent to recommend him for involuntary active duty.

(16) A Marine reservist who applies for conscientious objector status subsequent to receiving notification of his commanding officer's intent to recommend him for involuntary active duty will carry out orders issued and be employed in duties in accordance with provisions of subparagraph (12) of this paragraph.

(f) *Classification*—(1) *Discharge*—(i) Applicants requesting discharge who are determined to be 1-O conscientious objectors by Headquarters Marine Corps will be discharged "For the Convenience of the Government" with an entry in the service record and on the discharge document that the reason for separation is conscientious objection. The type of discharge issued will be governed by the applicant's service record and provisions of this part (MCO P1900.16). The Director of the Selective Service System will be promptly notified of the discharge of those who have served less than 180 days on active duty. Pending separation, the applicant will continue to be assigned duties providing the minimum practicable conflict with his professed beliefs and will be expected to conform to the normal requirements of the command and to perform satisfactorily such duties to which he is assigned. Applicants may be discharged for violations under the Uniform Code of Military Justice while awaiting discharge, in addition to such other disciplinary and/or administrative action as may be deemed appropriate.

(ii) If the Selective Service System advises that induction was in fact erroneous under subparagraph 5d above, the claimant will be separated or assigned to noncombatant duties as he desires. If the Selective Service System advises that there was in fact a denial of a right or a significant procedural error in the evaluation of a claim, the induction will be considered erroneous and the individual discharged in accordance with this part (MCO P1900.16).

(2) *Assignment.* (i) Applicants requesting assignment to noncombatant duties who are determined to be class 1-A-O conscientious objectors by Headquarters Marine Corps will be reassigned to noncombatant training duties as indicated below or discharged at the discretion of the Commandant of the Marine Corps. Each applicant

will be required to execute the statement attached as enclosure (1).[2]

(ii) If the Selective Service System advises that any claim under paragraph (c)(4) of this section is unfounded or makes a final determination adverse to any claim, the claimant will be so informed and returned to full duty.

(iii) Inductees classified as 1-A-O by the Selective Service System will be assigned to regular recruit platoons and will participate in all regular recruit training except that concerning the use or studying of, or handling of, firearms, or weapons. The Commandant of the Marine Corps (code DF) will be notified of inductees so classified, to include the occupational field acceptable to the individual conscientious objector.

(iv) Enlistees who apply for conscientious objector status subsequent to commencement of recruit training will complete the regular recruit training except that concerning the use or studying of, or handling of, firearms or weapons and will list in their application three of the OF's in subdivision (vi) of this subparagraph that are acceptable to them.

(v) During recruit training involving the use and handling of firearms or weapons the inductee/enlistee conscientious objector will receive noncombatant training with other platoons or perform useful work.

(vi) A conscientious objector will not be assigned to individual combat training. Instead, upon completion of recruit training, he will be assigned directly to appropriate basic specialty training or on-the-job training to qualify in an MOS within OF's 01, 04, 15, 25, 30, 31, 32, 33, 34, 35, 40, 41, 46, or 55.

(vii) Subsequent to basic specialty training or on-the-job training, conscientious objectors will be utilized in their MOS's and/or in other duties which are consistent with paragraph (b)(5)(i) of this section. These assignments will be the responsibility of the command to which the conscientious objector is assigned. Nothing in the foregoing will preclude assignment of conscientious objectors to Fleet Marine Force units, or overseas, or in combat areas.

(viii) The disposition of Marine officers classified as conscientious objectors will be determined at Headquarters Marine Corps.

(3) Marines who are assigned to noncombatant duties, and persons who are assigned to normal military duties by reason of disapproval of their application, will be expected to conform to the normal requirements of the command and to perform satisfactorily such duties to which they are assigned. Violations of the Uniform Code of Military Justice by these members will be treated as in any other situation.

(g) *Promotion.* Promotion of conscientious objectors is permitted provided they meet all requirements prescribed for their assigned occupational fields and if, in the opinion of the commanding officer, the status of the individual in no way hampers him in the performance of the duties expected of that grade. A Marine's status as a conscientious objector, in itself, will not affect promotion, nor will special provisions in existing promotion procedures be established.

[37 FR 19128, Sept. 19, 1972]

General Instructions Relating to Discharges

Source: 26 FR 9539, Oct. 10, 1961, unless otherwise noted.

§ 730.100 Time and place of discharge.

(a) A regular or reservist stationed within the continental limits of the United States will be discharged from the Marine Corps at the duty station to which assigned at the time he becomes eligible for such discharge.

(b) Prior to expiration of enlistment or expiration of any extension of enlistment or when separation from active duty for any other reason is authorized, Marines serving on foreign shore and at sea, including such times as a ship may be in a United States port, who do not desire or are not eligible to reenlist or extend their enlistment will be transferred by the field commander concerned or commander of Marine Detachment Afloat to the Marine Corps activity nearest a port

[2] Filed as part of the original document.

of entry within the continental United States except as provided in paragraph (c) of this section. Transfer will be effected to ensure arrival not later than 10 days prior to the effective date of discharge or release. Provisions concerning assignment to sea and foreign service are contained in paragraph 4110 of the Marine Corps Personnel Manual.

(c) Enlisted personnel who are eligible for separation, and who are entitled to elect transportation to a destination outside the continental United States, shall be transferred to the Marine Corps activity nearest their destination. Such transfer will be made in accordance with current directives and in sufficient time to allow those persons to arrive not later than 10 days prior to the effective date of separation.

(d) Enlisted personnel becoming eligible to be separated under honorable conditions while serving outside the United States or its territories or possessions, in other than belligerent countries may, at their own request, be separated at their duty stations. Personnel shall indicate their election by executing on page 11 of the service record a request to be so separated. Such separation in the case of enlisted women becoming eligible to be separated by reason of pregnancy is contingent upon the individual having established residence in the area in which the duty station is located or being married to a person who has such a residence.

(1) Individuals desiring separation in a foreign country whether for the purpose of traveling or residing in a foreign area after separation from the service shall, at a time substantially prior to the normal date of separation, make application for a passport in accordance with current directives and for permission to remain in the foreign country or its possessions. These applications should be accompanied by statements from the commander relative to the date the person will be eligible for separation under honorable conditions.

(2) In the case of enlisted personnel, the commander shall, prior to separation of the individual ascertain that he will be issued a passport and has been or will be granted permission to remain in the foreign area. In this connection, the commander may accept a written statement from the appropriate consular or diplomatic representative to the effect that the individual concerned has applied for a passport and that it appears that he is eligible to receive a passport upon his separation from the service. In general, a consular or diplomatic representative will be in a position to make this latter statement upon receipt of proper proof of the individual's claim to United States citizenship or nationality. Permission to travel or reside in a foreign country may be substantiated by a written statement from the foreign government concerned that the individual has been granted or it is anticipated that he will be granted permission to remain in the foreign area in question.

(3) Officer personnel will submit requests to be separated on foreign station to the Commandant of the Marine Corps (Code DF). Contained in their request shall be a statement that application has been made for a passport and indications are that such passport will be granted upon separation. In addition, the request shall include a statement that permission to remain in the foreign area has been or will be obtained.

§ 730.101 Effective time of separation.

(a) A discharge takes effect upon delivery of the discharge certificate. The release to inactive duty of members of the Regular Marine Corps who are transferred to the Marine Corps Reserve and concurrently released to inactive duty takes effect upon delivery of the separation document.

(b) In cases where discharge has been authorized or directed and the individual is unavailable due to his unauthorized absence or confinement in a civilian jail, prison, or institution and personal delivery of the certificate is not possible or feasible, the discharge will be effected on the date shown on the discharge certificate.

(c) Title 38, U.S. Code, section 106(c), provides that, for the purpose of entitlement to benefits administered by the Veterans' Administration,

an individual discharged or released from a period of active duty shall be deemed to have continued on active duty during that period of time immediately following the date of such discharge or release from such duty determined in accordance with current regulations to be required for him to proceed to his home by the most direct route, and in any event, until midnight of the date of such discharge or release. If a discharged member is injured while returning home and requires hospitalization, he may be eligible for benefits from the Veterans' Administration and should be advised to file an appropriate claim with that agency.

(d) If discharge is being effected as a result of immediate entry or reentry into any component of the Armed Forces, the discharge will be dated as of the date preceding such entry or reentry.

(e) The release from active duty of a reservist who was assigned to active duty as a reservist is effective at the expiration of authorized travel time. The discharge of a reservist as the result of expiration of enlistment or fulfillment of service obligation will be effective on the date shown on the discharge certificate.

(f) When the date of discharge is not indicated, administrative discharges will be effected at the earliest practicable date and normally not later than 5 working days from the time of receipt of the discharge order by the command concerned.

(g) Discharge certificates and final pay or a substantial portion thereof will be prepared and ready for delivery to the Marine concerned upon the date of discharge or release from active duty.

(1) Delivery of discharge certificates will be made on the date of discharge to those Marines who have indicated that they do not desire to extend or reenlist.

(2) Marines who desire to extend or reenlist will be required to execute their enlistment contracts or extensions of enlistment on the dates their current enlistment contracts expire, or prior thereto, to be effective on the date next succeeeding the date of discharge or expiration of enlistment. Delivery of the discharge certificate will be accomplished on a date subsequent to the date of discharge.

(3) Commanders are authorized to effect discharge, or to order a reservist home for release from active duty, as appropriate on the last working day preceding a Saturday, Sunday, or holiday when the normal expiration of enlistment or date of detachment from the command in the case of a reservist falls on one of those days providing the individual Marine concerned consents in writing. The reason for discharge will be for convenience of the Government. Paragraphs 13261.1a and 13301.7c of the Marine Corps Personnel Manual (§§ 730.61(a)(1) and this paragraph) will be cited as authority. Personnel desiring to reenlist immediately will not be discharged early under this paragraph. The following statement of consent will be entered on page 11 of the service record and signed by the Marine concerned:

I hereby consent to be (discharged) (detached from my command) on ———— in lieu of my normal date of (expiration of enlistment) (detachment) on ————. I understand that entitlement to pay and allowances and credit for active Federal service ceases on the actual date of my separation from active service.

The following instructions are applicable to personnel discharged or released early under authority contained in this subparagraph.

(i) Personnel shall be considered eligible for the Good Conduct Award in all instances where eligibility therefor would have been established through normal expiration of obligated active service.

(ii) Recoupment of reenlistment bonus will not be made.

(iii) In the event of future recall, personnel will be considered in the same status as those who have completed their enlistments or periods of extended active duty.

[26 FR 9539, Oct. 10, 1961, as amended at 31 FR 16404, Dec. 23, 1966]

§ 730.102 Categories for discharge at duty stations within the United States.

(a) Commanders will process and discharge, at their present stations, all enlisted personnel eligible for dis-

charge who fall within one of the following categories: For personnel arriving in the United States from sea or foreign duty, the commander referred to is that of the post or station at or nearest the port of aerial port of entry.

(1) Those who have no obligated service under law and who will be discharged for reason of expiration of enlistment.

(2) Those who will be discharged for enlistment or reenlistment.

(3) Those whose discharge is directed by proper authority prior to expiration of enlistment.

(b) Except for reenlistment or when discharge is otherwise directed by competent authority, enlisted personnel who have not completed their obligated service under law will not be discharged upon expiration of enlistment. They will be transferred to the Marine Corps Reserve in accordance with current directives.

§ 730.103 Travel upon separation.

(a) Detailed instructions relating to the travel of personnel upon separation from the service or release from active duty are contained in Joint Travel Regulations and in the U.S. Navy Travel Instructions.

(b) If it is impossible to verify the place elected for the purpose of mileage from local records, the commander will accept a certificate from the individual as substantiation which will state the place elected for purpose of mileage and identify such place as the home of record, place from which ordered to active duty, the place of induction, or the place of entry into the service as he may elect. This certificate will be inserted in the service record book or officer's qualification record.

§ 730.104 Retention in service to liquidate indebtedness.

Neither Regular nor Reserve personnel will be retained on active duty for the purpose of liquidating indebtedness to the Government.

§ 730.105 Physical examinations, treatment, and proceedings.

(a) A complete physical examination shall be given to all enlisted personnel prior to discharge, transfer to Reserve, or release from active duty. Examination in the cases of personnel being discharged or retired upon the approved report of a medical board, or a physical evaluation board shall be given only if requested by the person being discharged or retired. Physical examinations shall be given in accordance with the Manual of the Medical Department and current directives. If as a result of such examination the enlisted person is found unfit for the performance of duty, his case shall be referred to an appropriate medical board.

(b) Discharge or release from active duty normally will not be effected when any of the following actions are being taken or contemplated:

(1) Physical evaluation board processing until the Secretary of the Navy has taken final action on the board proceedings and the Commandant of the Marine Corps has promulgated such action.

(2) Medical board hearing.

(3) Necessary medical or dental treatment.

(4) Further instructions are contained in part J of chapter 13 of the Marine Corps Personnel Manual.

(c) An enlisted Marine on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his own misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment or until it is determined that recovery to that extent is impossible. (Par. 13451, Marine Corps Personnel Manual.)

§ 730.106 Government property.

Government property in possession of enlisted personnel or on charge to them will be recovered prior to discharge. In case of shortages, commanders will take appropriate action to determine responsibility in accordance with current instructions.

§ 730.107 Uniforms and clothing.

(a) The instructions relating to uniform clothing of personnel being discharged are contained in Individual Clothing Regulations.

(b) A person discharged with a dishonorable, bad conduct or undesirable discharge or for reason of unsuitability or security shall have all uniform coats, overcoats, raincoats, liners, trousers, utility uniforms, caps and hats in his possession, together with all grade and branch of service insignia, service stripes, and brass or bronze buttons pertaining thereto, recovered by his commander prior to discharge, and if necessary, an outfit of civilian outer clothing will be issued to him in accordance with current instructions.

(c) Uniforms recovered from women Marines discharged as stated in paragraph (b) of this section shall be interpreted to mean all uniform coats, overcoats, skirts, dresses, utility uniforms, duffel bag, boots, handbag cover and strap, rain cap cover, hood for raincoat, neckties, scarfs, gloves, caps and hats, together with all grade and branch of service insignia, service stripes, and uniform buttons thereto. They will be permitted to retain the raincoat, handbag, and other items not specified above. If they do not possess an olive drab overcoat, the allowance of civilian clothing furnished shall include a civilian topcoat when weather conditions require.

§ 730.108 Accrued leave.

Prior to discharge the leave account will be balanced to the date of discharge to determine the total amount of leave accrued. Instructions relative to settlements for leave upon separation are contained in paragraph 15119 of the Marine Corps Personnel Manual.

§ 730.109 Pay accounts.

(a) The disbursing officer carrying the individual's account will be notified at least 3 working days prior to date of discharge.

(b) An enlisted person who is discharged for any reason with a dishonorable, bad conduct, or undesirable discharge and who would be otherwise without funds to meet his immediate needs shall, upon discharge, be paid a sum not to exceed $25 or such portion thereof as will, together with other funds available to the individual concerned, total $25. Detailed instructions regarding this cash allowance are contained in Navy Comptroller Manual, paragraph 044180.

§ 730.110 Interview by career planning officer.

(a) Prior to discharge each individual will be interviewed by post or organization career planning officer, who will, if the individual is considered desirable for reenlistment, point out the benefits of continued service in the Marine Corps. If the individual has definitely decided not to reenlist, interest should be aroused in the Marine Corps Reserve, pointing out the benefits to be obtained.

(b) Personnel should also be instructed to apply to the nearest recruiting officer, and not direct to the Commandant of the Marine Corps, should they desire to reenlist at some subsequent date. Recruiting officers have all the necessary information and can answer questions in much less time than if inquiry is made direct to the Commandant of the Marine Corps. Individual cases will be referred to the Commandant of the Marine Corps (Code DP) when necessary, by the recruiting officers.

[26 FR 9540, Oct. 10, 1961, as amended at 37 FR 6472, Mar. 30, 1972]

§ 730.111 Address of reserve director.

Each individual discharged and not reenlisted in the Regular Marine Corps will be informed of the address of the Director of the Marine Corps District nearest his prospective home and will be informed that, on questions relative to Marine Corps service, the Director may be consulted.

[31 FR 16404, Dec. 23, 1966]

§ 730.112 Preparation of the discharge certificate.

All enlisted discharge certificates will be prepared by the organization having custody of the service record book. The instructions contained in paragraph 15074 of the Marine Corps Personnel Manual will govern custody

and preparation of the discharge certificates.

§ 730.113 Delivery of discharge certificate.

The delivery of the honorable discharge certificate invariably will be made in person by an officer; in the case of a person who has completed his enlistment honorably or under honorable conditions, the delivery should be made by the post or regimental commander, or if that is impracticable, by the company commander, accompanied by the expression of a hope that the individual will reenlist or good wishes for a successful career.

§ 730.114 Armed Forces of the United States Report of Transfer or Discharge (DD Form 214).

(a) The Armed Forces of the United States Report of Transfer or Discharge, DD Form 214, will be prepared and delivered to each person at the time of his separation from active service for reasons other than death.

(b) Instructions contained in paragraph 15072 of the Marine Corps Personnel Manual shall govern preparation and disposition of the Armed Forces of the United States Report of Transfer or Discharge.

§ 730.115 Certificate of Service.

A Certificate of Service, DD Form 217-MC, will be issued at the time of separation from active duty to all personnel, officer and enlisted, who have served honorably during a period of active duty. Instructions contained in paragraph 15075 of the Marine Corps Personnel Manual will govern the preparation and delivery of the certificate of service.

§ 730.116 Honorable discharge button and honorable discharge pin.

Provisions concerning eligibility for the honorable discharge button and honorable discharge pin are contained in paragraph 8100 of the Marine Corps Personnel Manual.[1]

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[1] Paragraph 8100 and paragraph 8151 which is referred to therein read as follows:

8100 Honorable discharge button and pin

1. Each enlisted person of the Marine Corps who is honorably discharged or discharged under honorable conditions from the service will be issued a Marine Corps honorable discharge button, or pin in the case of women, to be worn with civilian dress.

2. Each enlisted member of the Marine Corps Reserve, who has served on continuous active duty for 30 days or more, will be issued one of these buttons upon honorable discharge or discharge under honorable conditions from the Marine Corps Reserve.

3. Discharged personnel who are authorized to receive a button and have not, or have lost such insignia, should make application to Commandant of the Marine Corps (Code DL). For issuing authority refer to paragraph 8151.

8151 Initial and replacement issue

1. *General.* a. Whenever a decoration, medal, lapel button or auxiliary insignia awarded in accordance with existing laws and regulations becomes lost, destroyed, or rendered unfit for use through no fault or neglect of the person to whom originally awarded, it shall be replaced without charge upon presentation of satisfactory evidence of the cause of loss, etc. However, if lost through negligence, the loser may replace such awards only by purchase at current published prices.

2. *Issued by Headquarters Marine Corps.* a. The Commandant of the Marine Corps (Code DL) issues decorations, campaign and service medals, appurtenances thereto, expert rifle and pistol requalification bars, and lapel buttons to members and former members of the Marine Corps and to the next of kin of deceased Marines.

(1) Above items are issued in response to individual applications. Commanders may originate applications for members of their commands provided they itemize the awards desired and identify the intended recipient in each instance.

(2) Applications for above items (original issue or replacement) should reach the Commandant of the Marine Corps (Code DL) not later than six weeks prior to the date desired. Applications should be individual requests.

(3) Applications requesting replacement of above items will include statement giving circumstances under which item was lost, destroyed or rendered unfit for use. Commanders will state whether or not the requested item was lost, etc., through the fault or neglect of the person to whom it was awarded. Applications not containing this statement will be returned.

(4) Personnel who have served in both officer and enlisted grade, or in other

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§ 730.117 Wearing of uniform after discharge.

Marines whose character of discharge is honorable or under honorable conditions, except when discharge is for unsuitability or for reason of security, may retain and wear their uniforms from the place of discharge to their homes, within 3 months after date of discharge. The phrase "from the place of discharge to his home, within 3 months after the date of such discharge," refers to the period between the date of discharge and the date of the person's arrival at his home and does not permit the wearing of the uniform after arrival home, even though the 3-month period has not expired. If such personnel served during war they shall, when not on active service, be entitled, upon occasion of ceremony, to wear the uniform of the highest grade held by them during their war service.

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branches of the U.S. Armed Forces should include all service numbers.

(5) Stock necessary to support issues of items listed in subparagraph a. above, resulting from individual applications is maintained at Headquarters Marine Corps. The Marine Corps Stock Fund is reimbursed for this inventory at Headquarters level, therefore commanders are not to cite funds in the application.

b. Purple Heart Certificates: (1) Application for Purple Heart Certificates should be made to Commandant of the Marine Corps (Code DL). Wounds must be substantiated in the records of this Headquarters before certificate can be issued.

(3) *Issued by field.* a. Commanders are currently authorized to issue the following as appropriate to members of their commands:

(1) Good Conduct Awards with Certificates.

(2) All small-arms qualification badges and bars except Rifle and Pistol Expert Requalification Bars.

(3) Honorable Discharge Button.

(4) Marine Corps Reserve Button.

(5) French Fourragere (only by commanders of the Fifth and Sixth Marine Regiments).

b. In making replacement, commanders will be guided by the provisions of subparagraph 1a, above, and will only issue those items stocked for regular issue in the activity involved. Since these items come under the cognizance of the Single Manager Program, requisitions for authorized stocks should be submitted to the normal source of supply. Under no circumstances are requisitions for stocks of these items to be submitted to Commandant of the Marine Corps.

4. *Items not issued.* a. Ribbon bars, except initial issue for personal decorations and unit awards, will not be issued by the Commandant of the Marine Corps. Replacements for ribbon bars of personal decorations and all other bars must be purchased at the individual's expense from Military Exchanges or commercial sources.

b. Combat Aircrew Insignia will not be issued by the Commandant of the Marine Corps or the appropriate commander. Insignia may be procured from Military Exchanges upon presentation of appropriate letter of authorization.

§ 730.118 National Service Life Insurance and insurance under the Insurance Act of 1951.

(a) In case an individual held National Service Life Insurance he should receive the fourth copy of the notification of discontinuance of allotment for National Service Life Insurance, Form VA 365.

(b) Each individual carrying National Service Life Insurance should receive explicit notice that he may pay premiums direct to the Veterans' Administration, District Office, P.O. Box 8079, Philadelphia, Pennsylvania, if he wishes to continue his insurance.

(c) Each individual covered by the Insurance Act of 1951 should be carefully counseled regarding the post-service insurance available to him. The time limitation on applying for this insurance should be emphasized (38 U.S.C. 701-724, 781-784). (Provisions in this respect are contained in par. 11100, Marine Corps Personnel Manual.)

§ 730.119 Benefit pamphlet.

Each individual separated will be given a copy of the DD pamphlet "Going Back to Civilian Life," (NAVMC-2537). (Provisions in this respect are contained in par. 11350, Marine Corps Personnel Manual.)

§ 730.120 Warning to individuals not eligible for reenlistment.

Every person discharged who is not eligible for reenlistment will be informed that: (a) Fraudulent enlistment in any branch of the service will undoubtedly be detected by finger-

prints, and (b) if concealment of his previous service and discharge results in his reenlistment, he will be subject to disciplinary action.

§ 730.121 Closing out of service record book.

The service record book of each person separated will be completed in accordance with the instructions contained in paragraph 15100 of the Marine Corps Personnel Manual.

§ 730.122 Forwarding of service record books.

(a) In all cases where individuals have been discharged, the service record books will be forwarded in accordance with instructions contained in paragraph 15100 of the Marine Corps Personnel Manual.

(b) In order to avoid confusion and delay in final settlement, no transfers will be made or authorized after an individual's accounts have been closed preliminary to discharge.

§ 730.123 Delivery of baggage and personal effects.

The individual's baggage and personal effects, upon discharge, will be delivered to the railroad station or other point of departure by the command concerned.

§ 730.124 Void enlistments.

(a) The law prohibits the enlistment in the Marine Corps of a person who is:

(1) A male and under 14 years of age;

(2) A female and under 18 years of age;

(3) Insane;

(4) Intoxicated; or

(5) Has deserted in time of war from any of the Armed Forces unless, in time of war, his enlistment is permitted by such authority as the Secretary of the Navy designates. (10 U.S.C. 5532.)

(b) An enlistment entered into by a person of one of the categories listed in paragraph (a) of this section is void.

(c) All cases of enlistments apparently entered into in violation of the prohibition in 10 U.S.C. 5532 shall be reported to the Commandant of the Marine Corps (Code DGK) immediately. After investigation of the facts and subject to any provision of law pertinent thereto, the Commandant of the Marine Corps will direct the action to be taken and the disposition of the person concerned. The foregoing reporting requirement applies, in addition to cases falling under paragraph (a) of this section, to the following illegal enlistments:

(1) Unauthorized execution of a contract of enlistment into the Marine Corps or Marine Corps Reserve while already a member of any component of any Armed Force of the United States or execution of such contract while on a retired list of any component of any Armed Force of the United States.

(d) The pay status of persons under above illegal enlistments is dealt with in 39 Comp. Gen. 742 and 860, and paragraph 044204.8, Navy Comptroller Manual.

§ 730.125 Notification of naturalized personnel being separated under other than honorable conditions.

(a) Provision is made by law to revoke the citizenship of naturalized citizens who are discharged either dishonorably or under other than honorable conditions. The Immigration and Naturalization Service, Department of Justice is responsible for the institution of proceedings for the revocation of citizenship in any such cases.

(b) In the event any naturalized citizen who is a member of the Marine Corps is being discharged either dishonorably or under other than honorable conditions, the commander of the dischargee shall forward immediately to the Commandant of the Marine Corps (Code DK), a report of such case in order that the required certification may be prepared and transmitted to the Immigration and Naturalization Service upon the person's discharge for determination as to the propriety of revocation of citizenship. This report will include the fact of discharge and the date thereof. The report will also include whatever information is shown on the dischargee's service records with respect to naturalization.

§ 730.126 Separation of aliens.

(a) In any case where personnel who are not citizens of the United States are to be separated within the United States or its Territories or Possessions, the nearest district office of the Immigration and Naturalization Service, Department of Justice, shall be notified of such pending separation and prospective date thereof. Such notification shall be submitted in sufficient time to permit the immigration authorities to take such action as they may deem appropriate prior to the date on which the individual is to be separated.

(b) Section 328 of the Immigration and Nationality Act (8 U.S.C. 1439) provides for expeditious naturalization of permanent resident aliens upon completion of 3 full years service in the Armed Forces of the United States provided certain other qualifications are met. In order not to jeopardize their eligibility for naturalization, permanent resident aliens serving on an enlistment or tour of extended duty of 3 years or more will not be discharged until completion of 3 full years service, solely for the convenience of the Government under the provisions of any early release program. Further, the above provisions will be explained to any alien who makes application for discharge by reason of own convenience or hardship prior to completion of 3 years service. Notwithstanding the foregoing, if any alien desires discharge for one of the above reasons, he may be discharged provided he makes the following signed statement on page 11 of the service record:

I understand that my requesting discharge prior to completion of 3 full years of service may jeopardize my eligibility for expeditious naturalization under 8 U.S. Code 1439. However, understanding the above, I request early discharge.

(c) The policy indicated in paragraph (b) of this section should not be construed as giving aliens an entitlement to retention in service for at least 3 full years regardless of their military record. Adequate provisions are contained in the Marine Corps Personnel Manual for the separation of personnel whose performance of duty or conduct does not justify their continued retention in the service.

(d) Section 315 of the Immigration and Nationality Act (8 U.S.C. 1426) provides for permanent denial of eligibility to become a citizen of the United States to any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such grounds. The statutory provision will be explained to any alien who makes application for discharge by reason of own convenience on the ground that he is an alien. An alien accepting discharge solely on the ground of being an alien shall be required to make the following signed statement of understanding on page 11 of the service record:

I understand that 8 U.S.C. 1426 provides that any alien who applies for discharge from the service of the United States on the ground that he is an alien, and is discharged from such service on such ground, shall be permanently ineligible to become a citizen of the United States.

Aliens separated under the foregoing conditions are not eligible and shall not be recommended for reenlistment.

[26 FR 9539, Oct. 10, 1961, as amended at 31 FR 16404, Dec. 23, 1966]

§ 730.127 Discharge of aliens.

(a) Title 10 U.S. Code 631 provides that each male person who enlists in the Armed Forces prior to his 26th birthday incurs a military service obligation. Aliens accepted for enlistment are not exempt by law from the military service obligation, and upon separation from active service are normally transferred to or retained in an appropriate Reserve component to complete any remaining period of obligated service.

(b) Commanders are authorized to discharge an alien upon completion of a term of active service or from an inactive duty Reserve status, upon the written request of the individual concerned, provided the applicant indicates that immediately subsequent to discharge, he will establish permanent residence in his native country or other country foreign to the United States.

(c) Aliens who declare their intention to establish a permanent residence in the United States will not be relieved of their military service obligation.

(d) Aliens who declare their intention to establish permanent residence outside the United States may be retained in an obligor status upon request.

[27 FR 2640, Mar. 21, 1962]

PROCEDURES FOR DISCHARGE OF RESERVISTS ON INACTIVE DUTY

§ 730.150 General.

The Commanding General, Marine Air Reserve Training Command; Directors, Marine Corps Districts and commanders of Organized Marine Corps Reserve Units (hereafter in this subpart referred to as commanders, where appropriate) are authorized to discharge enlisted reservists on inactive duty under their command in accordance with regulations promulgated for discharge of Marines from the Regular Marine Corps, and for reasons set forth below in paragraphs (a) to (i) of this section as amplified in §§ 730.151 to 730.159.

(a) For fulfillment of service obligation.

(b) For own request.

(c) For enlistment or appointment in the Regular Marine Corps or for appointment in the Marine Corps Reserve.

(d) For enlistment in the Regular Army, Navy, Air Force, or Coast Guard.

(e) For enlistment in another Reserve component of the Armed Forces.

(f) For failure to complete basic military training.

(g) For reason of erroneous assignment of military obligation.

(h) Lack of interest (the Commanding General, Marine Air Reserve Training Command, and Directors, Marine Corps Districts, only are authorized to discharge for this reason).

(i) When classified in either a IV-F or I-Y status by the Selective Service System.

[26 FR 9542, Oct. 10, 1961, as amended at 31 FR 16404, Dec. 23, 1966]

§ 730.151 Discharge for fulfillment of service obligation.

The commanders, shall discharge reservists upon completion of the 6- or 8-year term of service required for fulfillment of service obligation under 10 U.S. Code 651 and 50 Appendix, U.S. Code, 454d(3), Universal Military Training and Service Act, except those serving on an enlistment contract or extension which has not expired, unless qualified under the provisions of § 730.152.

[26 FR 9542, Oct. 10, 1961]

§ 730.152 Discharge for own request.

Commanders are authorized to discharge reservists on active duty under their command upon the reservist's written request under the following conditions:

(a) When the reservist has no period of obligated service pursuant to law and has completed 3 years of a current enlistment.

(b) When the reservist is an alien resident of a foreign country. (See § 730.127.)

(c) When a married enlisted woman has completed a minimum of 1 year of service and has served 6 months following any period of active duty for training. Requests for discharge under this paragraph will be accompanied by documentary proof of marital status. (See § 730.163.)

[27 FR 2640, Mar. 21, 1962]

§ 730.153 Discharge for enlistment, induction or appointment in the Regular Marine Corps or for appointment in the Marine Corps Reserve.

The enlistment of a reservist is deemed to be automatically terminated upon his enlistment or induction in the Regular Marine Corps or upon his acceptance of appointment as an officer in the Regular Marine Corps or Marine Corps Reserve. Upon receipt of official notification of such enlistment, induction or appointment, commanders will close out the service record of the reservist concerned, showing the date of discharge as of the day prior to enlistment or induction in the Regular Marine Corps or of acceptance of appointment. The dis-

charge certificate will be prepared and forwarded to, or retained by, the commander of the organization to which the individual will be assigned in his new status for delivery to the individual.

[31 FR 16404, Dec. 23, 1966]

§ 730.154 Discharge for enlistment or induction in the Regular Army, Navy, Air Force, or Coast Guard.

Upon receipt of official notification of the enlistment or induction of a reservist in the Regular Army, Navy, Air Force, or Coast Guard, commanders will effect the discharge of the reservist as of the day prior to such enlistment or induction, and forward the discharge certificate to his new organization, if known, otherwise to the Commandant of the Marine Corps (Code DGK) with a statement as to reason for nondelivery.

[31 FR 16404, Dec. 23, 1966]

§ 730.155 Discharge for enlistment in another Reserve component of the Armed Forces.

(a) Reservists not on active duty and having a military obligation under law who desire to enlist or accept appointment in another Reserve component of the Armed Forces of the United States, may, upon their application, or with their consent upon application of the Armed Force in which enlistment or appointment is desired, be discharged by the commander concerned, subject to the following conditions and procedures:

(1) Request may be approved and a conditional release granted if:

(i) The gaining Armed Force has a specific vacancy for the reservists in an Organized unit within a reasonable distance of his home or place of business, and there is no Organized Marine Corps Reserve unit similarly available to him; or

(ii) The gaining Armed Force has a specific vacancy for the reservist in an Organized unit within a reasonable distance of his home or place of business, and the reservist has special experience or professional, educational, or technical background which is clearly of greater use to the gaining Armed Force, and which use outweighs the value of the reservist's previous training in the Marine Corps; or

(iii) The reservist will be enrolled in an officer training program of the gaining Armed Force. When membership in the officer training program does not confer military status, discharge from the Marine Corps Reserve will be for the purpose of immediate enlistment in a Reserve component of the gaining Armed Force.

(2) Determination as to whether the foregoing conditions are met will be made by the commander of the reservist concerned.

(3) When a request is approved, the commander will furnish a conditional release to the originator of the request which shall contain the following elements:

(i) Statement that the request for discharge is approved, subject to the applicant's enlistment or acceptance of appointment in the gaining Armed Force, and will be effected upon notification to the approving authority of such enlistment or acceptance of appointment;

(ii) Request that approving authority be notified by the gaining Armed Force of the effective date of such enlistment or acceptance of appointment;

(iii) Date the reservist acquired his period of obligated service;

(iv) Term of military obligation.

(4) Upon receipt by the approving authority of evidence that the applicant has been enlisted or has accepted appointment in the gaining Armed Force, discharge will be effected as of the day prior to the date of such enlistment or acceptance of appointment. Discharge certificate will be forwarded to the gaining Armed Force for delivery to the reservist.

(b) Discharge of reservists, who do not have a military obligation, to enlist or accept appointment in a Reserve component of another Armed Force will be in accordance with the criteria and procedures stated in paragraph (a) of this section, unless the reservist is eligible for discharge at his own request. Conditional release in such cases will state that the reservist has no obligated service under law.

[26 FR 9543, Oct. 10, 1961]

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§ 730.156 Discharge for failure to complete basic military training.

Commanders will discharge reservists who have completed their obligated service, upon failure to complete the minimum military training requirements prescribed in the current Reserve Training SOP, unless waiver and retention is authorized pursuant to such instructions as may be issued by the Commandant of the Marine Corps.

[26 FR 9543, Oct. 10, 1961]

§ 730.157 Discharge for reason of erroneous assignment of military obligation.

The commanders are authorized to discharge enlisted Marines erroneously assigned a military obligation. The following is applicable to the discharge so effected:

(a) Authority for discharge will be this section.

(b) Character of discharge will be in accordance with the table shown in § 730.57 and the type which the Marine would have received if discharge had been effected upon expiration of enlistment inductee/service.

(c) Discharge will not be predated nor will a new DD Form 214 be issued.

(d) Do not effect discharge without affording the Marine an opportunity to reenlist in the U.S. Marine Corps Reserve provided he is qualified.

[26 FR 9543, Oct. 10, 1961]

§ 730.158 Discharge for lack of interest.

(a) The Commanding General, Marine Air Reserve Training Command, and Directors, Marine Corps Districts, are authorized to discharge, for lack of interest, reservists on inactive duty under their command, provided the reservist concerned does not have a military obligation under existing law.

(b) Lack of interest is defined as, and limited to one of the following:

(1) Failure to answer official correspondence or to comply with the directives contained therein.

(2) Failure to undergo a quadrennial physical examination when ordered.

[26 FR 9543, Oct. 10, 1961, as amended at 31 FR 16404, Dec. 23, 1966]

§ 730.159 Discharge of reservists classified IV-F and I-Y.

Commanders will discharge those reservists assigned to their commands who are classified in either a IV-F or I-Y status by the Selective Service System.

[31 FR 16405, Dec. 23, 1966]

§ 730.160 Recommendations for discharge.

(a) *Reasons.* Commanders may recommend to the Commandant of the Marine Corps (Code DMB) that reservists on inactive duty may be discharged for the following reasons:

(1) Convenience of the Government.
(2) Own convenience.
(3) Hardship.
(4) Minority.
(5) Unsuitability.
(6) Unfitness.
(7) Misconduct.
(8) Security.

(b) *Applicable provisions.* Recommendations will be prepared and processed in accordance with §§ 730.50-730.76.

(c) *Advice to be given and recorded.* See § 730.72 for the advice to be given and the recording of such advice when a reservist on inactive duty is recommended for an undesirable discharge, or when such reservist has 8 or more years of continuous active duty and is recommended for discharge by reason of unsuitability.

[31 FR 16555, Dec. 28, 1966]

§ 730.161 Not physically qualified.

(a) Upon receipt of a report from a medical officer that an enlisted reservist who is not on active duty, has been determined to be physically unqualified, the commander concerned will forward the Report of Medical Examination (SF 88 or NAVMC 588-PD) to the Commandant of the Marine Corps (Code DMB) via the Chief, Bureau of Medicine and Surgery, with recommendations as to retention, waiver, discharge, or transfer to another class.

(b) The Commanding General, Marine Air Reserve Training Command, and Directors, Marine Corps Districts are authorized to take the action described below in this paragraph upon being notified by the Com-

mandant of the Marine Corps that an enlisted reservist not on active duty has been found by the Chief, Bureau of Medicine and Surgery, to be physically unqualified for retention in the Marine Corps Reserve.

(1) If the reservist is a member of Class II Reserve, transfer to Class III Reserve.

(2) Inform the reservist of his status providing the following information and an appropriate form letter for reply:

(i) Medical description of physical defect.

(ii) That laws governing the Armed Forces require that any person, who is not physically qualified for assignment to active duty, be discharged or retired from the Marine Corps Reserve.

(iii) That in view of the foregoing he is requested to take one of the following courses of action:

(*a*) Submit a written request for discharge by reason of being physically unqualified.

(*b*) Request transfer to the Retired Reserve if eligible under existing regulations.

(*c*) Request a hearing before a physical evaluation board. Further, that expenses incurred incident to this hearing must be borne by the reservist concerned and that he would not be eligible to receive retired pay, severance pay or any other benefits as a result thereof. Additionally, that such hearings are expensive and that the physical evaluation board would be limited, in its recommended findings, to determining whether the Marine is physically qualified for active duty in the U.S. Marine Corps Reserve as set forth in § 725.427 of this chapter.

(*d*) That if no reply is received within 30 days from the date of the letter of notification, it will be considered that the reservist does not desire a hearing and that action will be taken to discharge him involuntarily by reason of physical disqualification.

(3) Upon completion of the foregoing, take such administrative action as may be indicated in accordance with the following instructions:

(i) Discharge the reservist upon receipt of his or her written request under authority contained in § 730.60.

(ii) In the event the reservist requests a hearing, authorize his appearance before the nearest physical evaluation board at no expense to the Government in accordance with instructions contained in the Disability Separation Manual (Part 725 of this chapter). Such authorization will be prepared in accordance with the format contained in paragraph (b)(3)(iii) of this section. The addresses of the physical evaluation boards are shown in paragraph (b)(3)(iv) of this section.

(iii) Format of authorization to appear before a Physical Evaluation Board.

From: Commander, Marine Air Reserve Training.
To:
Via: Senior Member, Physical Evaluation Board (insert appropriate mailing address shown in paragraph (b)(3)(iv) of this section).
Subj: Authorization to appear before a Physical Evaluation Board.
Ref: (a) Disability Separation Manual, NAVEXOS P-1990.
Encl: (1) Statement of Rights in triplicate (NAVEXOS-3332).

1. When notified by the via addressee that the necessary records are available for presentation of your case, you are authorized to report to that officer for an evaluation of your present physical condition.

2. In the evaluation of your physical condition, the Physical Evaluation Board is directed to conduct the proceedings in all respects as provided for hearings in the case of active-duty members except that it will make only the recommended finding that you are or are not physically qualified for active duty in the U.S. Marine Corps Reserve. The Board's attention is invited to paragraph 0427 of reference (a).

3. The above is authorized with the understanding that you will not be entitled to reimbursement for mileage or expense in connection therewith. In case you do not desire to bear this expense or if for any reason you fail to report to the Physical Evaluation Board on the date specified, you will regard paragraph 1 of this authorization as revoked.

4. You are advised that if for any reason you are unable to report in person to the Physical Evaluation Board on the date specified, you may waive your right to appear in person. If you waive your right to appear in person, your case will be submitted to the Physical Evaluation Board for an examination on the record. It is requested that you execute the enclosed Statement of Rights

and return it to the via addressee prior to the date set for your examination.

5. Whether you appear in person or waive your right to appear in person, you may be represented by counsel if you so desire. You are advised that if you desire counsel to assist or represent you in presenting your case before the Physical Evaluation Board, competent legal assistance is available without expense to you. Should you desire to avail yourself of this service, you may apply to the Senior Member of the Physical Evaluation Board.

6. By endorsement hereon the via addressee is requested to notify you of the date and place you are to appear.

(Signature of commander)

Copy to:
BuMed (Code 3351)
CMC (Code DMB)
Individual concerned—4

(iv) Mailing list of Physical Evaluation Boards.

First Naval District, U.S. Naval Hospital, Chelsea 50, Mass.
Third Naval District, U.S. Naval Hospital, St. Albans, Long Island 12, N.Y.
Fourth Naval District, U.S. Naval Hospital, 17th Street and Pattison Avenue, Philadelphia 45, Pa.
Fifth Naval District, U.S. Naval Hospital, Portsmouth, Va.
Sixth Naval District, U.S. Naval Hospital, U.S. Naval Base, Charleston, S.C.
Ninth Naval District, Building 1, Great Lakes, Ill.
Eleventh Naval District, U.S. Naval Hospital, San Diego 34, Calif.
Twelfth Naval District, U.S. Naval Hospital, Oakland 14, Calif.
Headquarters Marine Corps, Henderson Hall,
Building No. 3, Washington 25, D.C. U.S. Naval Hospital, Camp Lejeune, N.C. U.S. Naval Hospital, Camp Pendleton, Calif.

NOTE: Address all correspondence to Senior Member.

Example: Senior Member, Physical Evaluation Board, Headquarters, Ninth Naval District, Great Lakes, Ill.

[26 FR 9543, Oct. 10, 1961, as amended at 31 FR 16405, Dec. 23, 1966]

§ 730.162 Discharge certificate.

(a) A reservist who has served on active duty other than active duty for training during his current enlistment will be discharged in accordance with instructions governing enlisted Marines of the Regular Marine Corps discharged under similar conditions, and the type of discharge certificate prescribed therefor will be used.

(b) A reservist who has not served on active duty, other than active duty for training during current enlistment, will be issued the Honorable Discharge Certificate, DD Form 256-MC, on discharge, unless otherwise directed in the individual case by the Commandant of the Marine Corps.

(c) Instructions governing preparation of discharge certificates are contained in paragraph 15074 of the Marine Corps Personnel Manual.

(d) Upon transmittal of discharge certificates, inform each Marine that it is his responsibility to report his change of status to his local board of the Selective Service System.

[26 FR 9544, Oct. 10, 1961]

§ 730.163 Discharge of women who become a parent or custodian of a child.

Commanders shall discharge an enlisted woman in accordance with § 730.61(b)(2) when it is established that such woman comes within its purview.

[26 FR 9544, Oct. 10, 1961]

§ 730.164 Discharge of reservists on inactive duty who have become regular or duly ordained ministers of religion or who desire to take final vows in a religious order.

(a) Members of the Marine Corps Reserve on inactive duty who have become regular or duly ordained ministers of religion or who desire to take final vows in a religious order may request separation as follows:

(1) Officers will submit resignation of commission to the Secretary of the Navy through official channels via the Commandant of the Marine Corps (Code DMA).

(2) Enlisted personnel will submit requests for discharge via official channels to the Commandant of the Marine Corps (Code DMB).

(b) The following definitions apply for the purposes of his paragraph:

(1) "Regular minister of religion" is defined as a person who as his customary vocation preaches and teaches the principles of religion of a church, a re-

ligious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect or organization as a regular minister.

(2) "Duly ordained minister of religion" is defined as a person who has been ordained in accordance with the ceremonial ritual, or discipline of a church, religious sect, or religious organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(3) The above definitions do not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect or religious organization or who may have been duly ordained a minister in accordance with the ceremonial rite, or discipline of a church, religious sect or religious organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

(c) Resignation of a commission or application for discharge must be accompanied by a statement or certificate from an appropriate official of the church, religious sect, or religious organization attesting that the reservist is a regular or duly ordained minister of religion as defined in the foregoing paragraph, or if the reservist desires to take final vows in a religious order, his resignation or application for discharge must be accompanied by a statement or certificate from an appropriate official of the religious order showing that in order to proceed further with his acceptance into the religious order, it is required that the reservist be separated from any military status he may have.

[26 FR 9544, Oct. 10, 1961]

Subpart C—Navy and Marine Corps

SOURCE: 31 FR 16405, Dec. 23, 1966, unless otherwise noted.

§ 730.301 Purpose.

To prescribe certain criteria, policy, and procedures for the administrative separation of enlisted members of the naval service pursuant to Part 41 of this title.

§ 730.302 Policy.

The administrative separation of enlisted members of the naval service will be accomplished by the authority of and pursuant to the criteria, policy, and procedures set forth in this subpart, the Marine Corps Personnel Manual, the Bureau of Naval Personnel Manual, the Manual of the Medical Department, and such other orders and regulations as may be published by the Secretary of the Navy, the Commandant of the Marine Corps, the Chief of Naval Personnel, and the Chief, Bureau of Medicine and Surgery.

§ 730.303 Requirements.

Pursuant to the provisions of §§ 41.4(d), 41.6(b)(10), and 41.8(b) of this title, the following policies, criteria, and procedures are established:

(a) *Periodic explanation of types of discharge certificates.* The Commandant of the Marine Corps and the Chief of Naval Personnel will, for their respective services, prescribe appropriate internal procedures for periodic explanation to enlisted members of the naval service of the various types of discharge certificates, the basis for their issuance, and their possible effects upon reenlistment, civilian employment, veterans' benefits, and related matters. As a minimum such explanation will be given each time the Articles of the Uniform Code of Military Justice (10 U.S.C. 801-940) are explained pursuant to Article 137 thereof (10 U.S.C. 937). Failure on the part of any member to receive or to understand such explanation, however, shall in no event be considered a defense in an administrative discharge proceeding or a bar thereto.

(b) *Discharge for the convenience of the Government.* In addition to the reasons specified in § 41.6(b) of this title, administrative separation for the convenience of the Government may be authorized, directed or further prescribed by the Commandant of the Marine Corps or the Chief of Naval Personnel in their respective services for the following reasons:

(1) For the purpose of holding public office as prescribed by the Commandant of the Marine Corps or the Chief of Naval Personnel.

(2) In the case of a married enlisted woman on active duty at her written request, provided she is not serving at a duty station which is sufficiently close to the location of her husband to permit the establishment of a joint household, and provided she meets such other conditions as may be prescribed by the Commandant of the Marine Corps or the Chief of Naval Personnel for their respective services.

(3) Obesity, provided that a medical officer certifies that the proximate cause of the obesity is the excessive voluntary intake of food and/or drink, rather than from organic or other similar causes apparently beyond the control of the member.

(4) Repeated below average or unsatisfactory markings or unfavorable or less than favorable remarks on noncommissioned or petty officer fitness or enlisted performance evaluation reports.

(5) Substandard personal behavior which reflects discredit upon the service or adversely affects the member's performance of duty, including but not limited to:

(i) A history of repeated minor disciplinary infractions, so as to present an administrative burden to the command.

(ii) Repeated overindulgence in alcoholic beverages, even though such overindulgence does not exist to a degree which would permit a medical officer to diagnose the member as an alcoholic.

(6) In the case of a member of the Naval or Marine Corps Reserve, on inactive duty, who, as a result of an annual or quadrennial physical examination required by Article 15-76, Manual of the Medical Department, or any other official physical examination, is determined by the Chief, Bureau of Medicine and Surgery, to be temporarily physically disqualified for retention in the Naval or Marine Corps Reserve or whose physical qualification status is undetermined pending further information or examination and the member fails to submit to or cooperate in such further physical examinations as are directed by competent authority in order to permit a final determination to be made regarding the member's physical qualification for retention in the Naval or Marine Corps Reserve.

(7) Upon the individual member's written request, where there is a demonstrated dependency or hardship, even though such dependency or hardship does not meet the criteria specified in § 41.6(d) of this title.

(8) Upon the recommendation of the Chief, Bureau of Medicine and Surgery, that a member of the naval service be separated for administrative reasons when such member is suffering from a condition not considered a physical disability and such condition has interfered with his performance of duty.

(9) When, as determined by a medical officer or his commanding officer, a member is allergic to clothing material or cannot be fitted with appropriate uniform clothing or provided with appropriate bedding.

(10) As a result of action taken with respect to the decisions or recommendations of the Naval Clemency Board, a Navy or Marine Corps Selection and Review Board, or a Navy or Marine Corps Enlisted Performance Board or other similar board.

(11) When, as determined by a medical officer, the member suffers from motion/travel sickness (989-), as listed in Department of Defense Disease and Injury Codes (TB MED 15/NAVMED P-5082/AFM 160-24).

(12) Upon the individual member's request, when a member becomes a "regular or duly ordained minister of religion," as that quoted phrase is defined in section 16(g) of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 466(g)).

(13) Upon determination by a medical officer that a member of the Naval

or Marine Corps Reserve, whether on active or inactive duty, as a member of any of the various Navy or Marine Corps officer candidate, officer training, or officer procurement programs, is not physically qualified for appointment as an officer in the naval service, although the member's physical disqualification does not fall within the purview of § 41.6(f) of this title, and although the member is physically qualified to serve as an enlisted member of the naval service.

(14) Upon the written request of an individual enrolled in any of the Navy or Marine Corps Officer Candidate Programs, including the U.S. Naval Academy, to be disenrolled from such program; or when a member of any of the Navy or Marine Corps Officer Candidate Programs including the U.S. Naval Academy, is disenrolled from or fails to satisfactorily meet any of the requirements for completion of the Officer Candidate Program in which he is enrolled, provided the member is not considered qualified for enlisted status.

(15) Where a member of the Naval Reserve, or the Marine Corps Reserve (Component Class Reserve Status Code "J"), on inactive duty, becomes disqualified for enlistment in the Regular Navy or Marine Corps.

(16) Where a member is properly inducted, enlisted, or reenlisted, but is erroneously given a higher grade than that to which he is entitled under applicable Navy and Marine Corps directives.

(17) Where a member is properly inducted, enlisted, or reenlisted, but has more than the maximum number of dependents authorized by applicable Navy and Marine Corps directives.

(18) Where a member is properly inducted, enlisted, or reenlisted, but, because of subsequent increased height, cannot be assigned duties appropriate to his office, rank, grade, or rating.

(19) Where a member is erroneously delivered a punitive discharge before review of the adjudged punitive discharge is final and, as a result of final review, the punitive discharge is set aside, suspended, or remitted.

(20) Where a recruit, upon enlistment, concealed the fact that he was married, or where a recruit, upon enlistment, concealed a juvenile or youthful offender record.

(21) At the individual member's written request, to permit the member to enter or return to an accredited college or university.

(22) At the individual member's written request, to permit the member to take final vows in a religious order.

(23) At the individual member's written request, to permit the member to accept employment of a seasonal nature.

(24) At the individual member's written request, on the grounds of being an alien.

(25) Where a member cannot be assigned appropriate duties because of security reasons.

(26) When a member is found to be serving in a constructive enlistment.

(27) As a result of the issuance of a writ of habeas corpus wherein it has been determined that the member's retention in the naval service is illegal.

(28) Where a member of the Naval or Marine Corps Reserve on inactive duty receives formal notice of induction from the Selective Service System, or enlists in the active service of any branch of the Armed Forces; or enlists in another Reserve component of any branch of the Armed Forces, or accepts an appointment as an officer in any branch of the Armed Forces.

(29) [Reserved]

(30) Upon written request of a married woman member of the Naval or Marine Corps Reserve on inactive duty, provided she has completed a minimum of 1 year of service and has served 6 months following any period of active duty for training.

(31) When a member of the Naval or Marine Corps Reserve on inactive duty fails to complete military training, is erroneously assigned a military obligation, or demonstrates a lack of interest.

(32) In the case of a member of the Naval or Marine Corps Reserve on inactive duty who fails to comply with request for physical examination or to submit additional information in connection therewith.

(33) When a member of the Naval or Marine Corps Reserve, on inactive duty, is classified in either a IV-F or I-

Y status by the Selective Service System.

(c) *Record of proceedings of administrative discharge boards.* The record of proceedings of each administrative discharge board will be maintained as prescribed by the Commandant of the Marine Corps or by the Chief of Naval Personnel, for their respective services, but, as a minimum, shall contain:

(1) A resume of the facts and circumstances, accompanied by supporting documents upon which the recommendation of the administrative discharge board was based including a summary of the testimony of all witnesses heard by the board; (2) the identity of the counsel for the respondent and his legal qualifications; (3) the identity of the recorder; and (4) a verbatim record of the board's findings and recommendations.

[31 FR 16405, Dec. 23, 1966, as amended at 32 FR 11266, Aug. 3, 1967]

§ 730.304 Applicability.

The policy, criteria, and procedures prescribed in this subpart shall be employed in the administrative separation of any enlisted member of any component of the naval service.

§ 730.305 Action.

The Commandant of the Marine Corps, the Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery, will, as applicable, cause all current Navy and Marine Corps orders and directives pertaining to administrative discharge from the naval service to be amended to conform to the appropriate provisions of this subpart and Part 41 of this title.

PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

Sec.
732.1 Purpose.

Subpart B—Medical and Dental Care From Civilian Sources

732.12 General.

Subpart A—General

§ 732.1 Purpose.

To delineate and promulgate the authority and policies concerning medical and dental care obtained from nonnaval sources by active duty members and the conditions under which the costs of such care may be borne by the Navy.

(5 U.S.C. 301; 10 U.S.C. 1071-1085, 5031, 6148, 6201-6203, 8140; and 32 CFR 700.1202)

[41 FR 30636, July 26, 1976]

Subpart B—Medical and Dental Care from Civilian Sources

§ 732.12 General.

If medical/dental care is required and there are no naval facilities available, initial application shall always be made to another federal medical/dental facility if available. (Federal facilities are those of Navy, Army, Air Force, Public Health Service, and Veterans Administration.) If there are no federal medical/dental facilities available, required care may be obtained from civilian sources under the following conditions:

(a) *Emergency situations.* In an emergency, non-federal medical/dental care may be obtained by or on behalf of eligible personnel without the prior authority covered below. An emergency is defined as a situation where the need or aparent need for medical or dental attention is such that time does not permit obtaining the required authority in advance. Emergency dental care is limited to measures appropriate to relieve pain or to abort infection. Emergency dental care shall not include the furnishing of prosthetic appliances, including crowns or inlays, or the use of gold or other precious metals for fillings. As soon as possible, the authorizing officer should be provided with complete information, i.e., name of non-federal medical/dental facility, date(s), nature and extent of treatment or care, etc., obtained in order that he may make arrangements for transfer of the member to a federal facility, or to take such other action as may be appropriate. Except as pro-

vided in this paragraph, care from non-federal sources may be provided at Navy expense only when authorized in advance as set forth below.

(b) *Non-emergency care.* When the district medical officer or district dental officer of the naval district where the care is to be rendered believes that civilian medical/dental care is appropriate, he may authorize treatment from civilian sources. In overseas areas, commanding officers may authorize care from other than U.S. naval sources when no naval or other U.S. military medical/dental facilities are available. If at all practicable, when ships are in NATO SOFA ports, required care shall be obtained from military facilities of the host country when U.S. facilities are not available.

(c) *Care which may be authorized—*
(1) *Medical care.* Includes consultations and treatment provided by physicians or medical facilities as well as medical procedures not involving treatment when directed by the Bureau of Medicine and Surgery. Treatment includes hospital care, surgery, nursing, medicine, laboratory and X-ray services, physical therapy, eye examinations, etc.

(2) *Dental care.* Includes: (i) All types of treatment rendered (including operative, restorative, and oral surgical) to relieve pain and abort infection.

(ii) Prosthetic treatment rendered to restore extensive loss of masticatory function or the replacement of anterior teeth for esthetic reasons.

(iii) Repair of existing dental prosthesis in instances where neglect of the repair would result in unserviceability of the prosthesis.

(iv) Any type of treatment rendered as an adjunct to medical/surgical care.

(v) All X-rays, drugs, etc., required to accomplish treatment in all the above categories.

(3) *Eye refractions and spectacles.* Includes refractions of eyes by physicians and optometrists and the repair and furnishing of spectacles. A refraction may be obtained only when federal facilities are not available, and no suitable prescription is in the Health Record. The prescription from the refractionist with proper facial measurements must be sent to the appropriate dispensing activity set forth in BUMED Instruction 6810.4E. When a member has no suitable spectacles and the lack thereof, combined with the delay resulting from obtaining them from a military source, would prevent the performance of duty; the repair, replacement, or procurement of spectacles from civilian sources may be authorized. Procurement under these circumstances requires prior approval. Neither examination for nor procurement of contact lenses is authorized by this part.

(5 U.S.C. 301; 10 U.S.C. 1071-1085, 5031, 6148, 6201-6203, 8140; and 32 CFR 700.1202)

[41 FR 30636, July 26, 1976]

PART 733—ASSISTANCE TO AND SUPPORT OF DEPENDENTS; PATERNITY COMPLAINTS

Sec.

733.1 Rates of basic allowance for quarters.
733.2 Delegations.
733.3 Information and policy on support of dependents.
733.4 Complaints of nonsupport and insufficient support of dependents.
733.5 Determination of paternity and support of illegitimate children.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 37 U.S.C. 101, 401, 403; 50 U.S.C. App. 2210; E.O. 11157, 29 FR 7973, 3 CFR 1964 Supp. p. 139, as amended.

SOURCE: 44 FR 42190, July 19, 1979, unless otherwise noted.

§ 733.1 Rates of basic allowance for quarters.

(a) Except as otherwise provided by law, a member of the naval service entitled to basic pay is entitled to a basic allowance for quarters at the monthly rates according to the pay grade to which he or she is assigned, in accordance with 37 U.S.C. 403.

(b) The term "dependent" with respect to a member of the naval service, as used in this part, means:

(1) His or her spouse;

(2) His or her unmarried child (including any of the following categories of children if such child is in fact dependent on the member: A stepchild; an adopted child; or an illegitimate child whose alleged member-parent has been judicially decreed to be the parent of the child or judicially ordered to contribute to the child's sup-

port, or whose parentage has been admitted in writing by the member) who either:

(i) Is under 21 years of age; or

(ii) Is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his or her support; and

(3) His or her parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before he or she became 21 years of age) who is in fact dependent on the member for over one-half of his or her support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary of the Navy, and he or she is not considered a dependent of the member claiming the dependency unless:

(i) The member has provided over one-half of his or her support for the period prescribed by the Secretary; or

(ii) Due to changed circumstances arising after the member enters on active duty, the parent becomes in fact dependent on the member for over one-half of is or her support.

The relationship between a stepparent and his or her stepchild is terminated by the stepparent's divorce from the parent by blood.

§ 733.2 Delegations.

The Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199, with respect to personnel of the Navy, and the Head, Personal Affairs Branch, Manpower Department, Headquarters United States Marine Corps, Washington, D.C. 20380, with respect to personnel of the Marine Corps, have been granted the authority by the Secretary of the Navy to make determinations including determinations of dependency and relationship when required by legislation or policy for eligibility for basic allowance for quarters, transportation and medical care in behalf of dependents of Navy and Marine personnel and to administer matters involving adequacy of support for dependents and waivers of support of a spouse, and on the basis of new evidence or for other good cause to reconsider or modify any such determination.

§ 733.3 Information and policy on support of dependents.

(a) *Policy*—(1) *General.* The naval service will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the naval service are expected to conduct their personal affairs satisfactorily. This includes the requirement that they provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so which tends to bring discredit on the naval service is a proper subject of command consideration for initiation of court-martial proceedings or other administrative or disciplinary action.

(2) *Adequacy of support.* Every member has an inherent natural and moral obligation to support his or her spouse and family. What is adequate and reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. Salient factors that should be considered are the pay of the member, any other private income or resources of the member and the dependents, the cost of necessities and every day living expenses and financial obligations of the dependents, and the expenses and other financial obligations of the member in relation to his or her income. The Department of the Navy does not and cannot act as a court in these matters. It is desired that the amount of support to be provided for dependents either be established by mutual understanding between the parties concerned or adjudicated in the civil courts. The support scales set forth below are not intended as a fixed rule. They are intended as guidelines and the actual support may be increased or decreased as the facts and circumstances warrant until the amount of support to be furnished is settled by agreement of the parties or

adjudicated by the civil courts. Because of the inherent arbitrary and temporary nature of the support scales set forth below, it is not intended that they be used as bases for any judicial proceedings, for to do so would lend excessive credence to administrative tools which have been designed for use only within the Navy and the Marine Corps.

(i) Number of dependents and amount of support to be provided in the absence of a mutual agreement or court order:

(A) Navy members:

Relationship and number of dependents	Support to be provided (gross pay)
Spouse only	⅛
Spouse and one minor child	⅛
Spouse and two or more children	⅜
One minor child	⅛
Two minor children	¼
Three minor children	⅓

For purposes of this support guide, gross pay will include basic pay and basic allowance for quarters, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(B) *Marine Corps members.* If the question of support is in dispute, the following will be used as a guide for support:

For spouse only—BAQ plus 20% of basic pay.
For spouse and one minor child—BAQ plus 25% of basic pay.
For spouse and two or more minor children—BAQ plus 30% of basic pay.
For one child—⅛ of basic pay.
For two minor children—¼ of basic pay.
For three or more minor children—⅓ of basic pay.

(*1*) The amount of support to a dependent for whom basic allowance for quarters is claimed should not be less than the applicable rate of basic allowance for quarters to which the member is entitled.

(*2*) A Marine's obligation to provide for the support of children by a former marriage has as high a priority as an obligation to provide for a present wife and family. In those cases of a legitimate financial inability to provide support for all dependents, commanders shall attempt to assist the Marine in the equitable distribution of income for the assistance of all dependents, utilizing the guidelines set forth above.

(*3*) It is to be emphasized that the guidelines set forth are to be used only as an interim measure, and that the commander's decision as to the quantum of support to be provided will be, prima facie, the appropriate conclusion of the Marine Corps, pending civil court or extrajudicial resolution among the involved parties.

(3) *Support of a lawful wife.* The laws of jurisdictions in the United States impose a legal obligation upon a husband to support his wife. Exemptions from support of a lawful wife may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the wife or mutual agreement of the parties, or a waiver of the naval support requirement granted by the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps, as appropriate.

(4) *Payments of alimony.* Dependents for whom basic allowance for quarters or other allowances are payable are defined by law. For purposes of qualifying for basic allowance for quarters, medical care or other benefits, a former spouse is not a dependent even though alimony has been decreed. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though basic allowance for quarters is not payable.

(5) *Support of children.* The duty of a member to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the marriage through divorce, unless the judicial decree or order specifically negates the obligations of the member to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the service member of the inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant

of the existence of a child or children, or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child under the following conditions:

(i) Where the member cannot ascertain the whereabouts and welfare of the child concerned.

(ii) Where it is apparent that the person requesting support for a child does not have physical custody of the child.

(iii) Where the member has been granted custody of the child by court order but does not have physical control of the child and the member is ready, willing, and able to care for and support the child if physical control is obtained.

(6) *Adopted children.* The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parents. A Navy or Marine Corps member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for such child during minority.

(7) *Entitlement to basic allowance for quarters.* Entitlement of members to basic allowance for quarters on behalf of dependents is provided by statute. No member should be denied the right to submit a claim or application for basic allowance for quarters, nor should any command refuse or fail to forward any such claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the application and serves no useful purpose, as such cases are thoroughly investigated by the Navy Family Alowance Activity or Headquarters Marine Corps, which obtains necessary dependency affidavits directly from the parents. Any person, including a service member or dependent who obtains an allowance by fraudulent means is subject to criminal prosecution.

(8) *Application of the rule based on Robey v. United States 71 Ct. Cl. 561.* Determinations that no dependency exists may be made in disputed cases—if a member does not contribute to the support of spouse and child at least to the extent of:

(i) The full amount of his/her basic allowance for quarters, or

(ii) An amount specified in a court order or legal separation agreement, or

(iii) An amount agreed to by the parties as acceptable, adequate support, whichever is lesser. Pertinent decisions of the Court of Claims or Comptroller General will be followed in determinations of dependency.

§ 733.4 Complaints of nonsupport and insufficient support of dependents.

(a) Upon receipt of a complaint alleging that a member is not adequately supporting his or her lawful dependents (spouse or children), the member will be interviewed and informed of the policy of the Department of the Navy concerning support of dependents. In the absence of a determination by a civil court or a mutual agreement of the parties, the applicable guide in § 733.3 will apply. The member will be informed that his/her Navy or Marine Corps career may be in jeopardy if he/she does not take satisfactory action. The member may become ineligible to reenlist or extend enlistment (in the case of enlisted members), and may be subject to administrative or disciplinary action that may result in separation from the Navy or Marine Corps.

(1) *Waiver of support of spouse.* If the member feels that he or she has legitimate grounds for a waiver of support for the spouse, the Director, Navy Family Allowance Activity, acting under the policy guidance of the Chief of Naval Personnel or the Commandant of the Marine Corps (Code MSPA), may grant such a waiver for support of a spouse (but not children) on the basis of evidence of desertion without cause or infidelity on the part of the spouse. The evidence may consist of—

(i) An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer. However, affidavits of the serv-

ice member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of heresay, opinion, and conclusion are not acceptable as evidence.

(ii) Written admissions by the spouse contained in letters written by that spouse to the service member or other persons.

The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps (Code MSPA) with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

(2) *Action.* After a written complaint that a member has failed or refused to furnish support for his or her spouse or children has been received, and the member has been counseled with regard to his/her rights and obligations in the support matter, continued failure or refusal, without justification, to furnish support for dependents in accordance with the provisions of a valid court order, written agreement, or, in the absence of a court order or agreement, the appropriate support guide set forth above, will be a basis for consideration of disciplinary or administrative action which may result in the member's separation from active service.

§ 733.5 Determination of paternity and support of illegitimate children.

(a) *Illegitimate children.* If the service member desires marriage, leave for this purpose is recommended whenever consistent with the needs or exigencies of the service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate.

(b) *Judicial order or decree of paternity or support.* Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree falls within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy or Marine Corps on active duty, the member concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The member will be advised that he is expected to render financial assistance to the child regardless of any doubts of paternity that the member may have. If the court order or decree specifies an amount of support to be provided the member will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable guide set forth above. However, no basic allowance for quarters will be included in using the guide unless basic allowance for quarters is payable in behalf of illegitimate children. If the member refuses to comply with the terms of the court order, administrative action will be taken as indicated in § 733.4.

(1) *Court of competent jurisdiction.* A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, although not always, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the court may have acquired jurisdiction over the member by any mode of service or notice recognized as sufficient by the laws of that country. It should be noted, however, that an order or decree against a citizen or permanent resident of another country, without personal service or per-

sonal notice of the action to him or her, is null and void unless the member voluntarily submitted to the jurisdiction by appearing and contesting the action. In the event there is doubt as to the competency of the court to enter the order or decree, the question shall be referred to the Judge Advocate General.

(c) *Nonjudicial determination.* In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the member shall be privately consulted and asked, where appropriate, whether he or she admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he or she is expected to furnish support as set forth in paragraph (b) of this section. Where paternity or the legal obligation to support is admitted by a male member, such member should be informed of his moral obligation to assist in the payment of prenatal expenses.

(d) *Members not on active duty.* Allegations of paternity against members of the naval service who are not on active duty will be forwarded to the individual concerned in such a manner as to insure that the charges are delivered to the addressee only. The correspondence should be forwarded via the commandant of the naval district in which the member resides.

(e) *Former members.* (1) If a certified copy of a judicial order or decree of paternity or support duly rendered by a United States or foreign court of competent jurisdiction against a former member of the Navy or Marine Corps is submitted, his or her last-known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed of the date of discharge and advised that the individual concerned is no longer a member of the Navy or Marine Corps in any capacity.

(2) Where there has been no court adjudication, the correspondence will be returned to the complainant with an appropriate letter stating that the individual is no longer a member of the Navy or the Marine Corps in any capacity and giving the date of his or her discharge or final separation except that the last-known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a document which establishes that the former member has made an admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it. In cases where the complaint, along with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father in order to protect the physical health of either the prospective mother or the unborn child, the last-known address of the former member shall likewise be furnished to the claimant.

PART 734—GARNISHMENT OF PAY OF NAVAL MILITARY AND CIVILIAN PERSONNEL FOR COLLECTION OF CHILD SUPPORT AND ALIMONY

Sec.

734.1 Purpose.
734.2 Scope.
734.3 Service of process.
734.4 Responsibilities.
734.5 Administrative procedures.

AUTHORITY: 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

SOURCE: 44 FR 42193, July 19, 1979, unless otherwise noted.

§ 734.1 Purpose.

This part prescribes responsibilities and procedures applicable in the Department of the Navy when processsing and honoring legal process brought for the enforcement of legal obligations to provide child support or make alimony payments under 42 U.S.C. 659 (Social Security Act, section 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

§ 734.2 Scope.

The provisions of this part shall apply to legal process affecting any Federal pay administered by the Department of the Navy and due and payable to all categories of naval military or civilian personnel including personnel of Navy or Marine Corps nonappropriated-fund activities. This part is not applicable to legal process affecting entitlements administered by other agencies, such as civilian employees' retirement benefits administered by the Office of Personnel Management or compensation administered by the Veterans Administration.

[44 FR 42193, July 19, 1979, as amended at 47 FR 28371, June 30, 1982]

§ 734.3 Service of process.

(a) It is the policy of the Department of the Navy to respond promptly to legal process addressed to naval officials. Service of legal process affecting the pay of Department of the Navy personnel shall be made on the following designated officials in the manner and in the circumstances specified below:

(1) *Navy members.* Process affecting the military pay of active duty, Reserve, Fleet Reserve, or retired Navy members, wherever serving or residing, may be served personnally or by registered or certified mail, return receipt requested, on the Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199.

(2) *Marine Corps members.* Process affecting the military pay of active-duty, Reserve, Fleet Marine Corps Reserve, or retired Marine Corps members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Commanding Officer, Marine Corps Finance Center (AA), Kansas City, Missouri 64197.

(3) *Civilian Employees.* Process affecting the pay of active civilian employees of the Department of the Navy:

(i) If currently employed at Navy or Marine Corps activities (including nonappropriated-fund instrumentalities) or installations situated within the territorial jurisdiction of the issuing court, such process may be served personally, or by registered or certified mail, return receipt requested, on the commanding officer or head of such activity or installation, or principal assistant specifically designated in writing by such official.

(ii) In other cases involving civilian employees, such process may be served personally or by registered or certified mail, return receipt requested, in the manner indicated below:

(A) If pertaining to civil service personnel of the Navy or Marine Corps, such process may be served on the Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, D.C. 20390.

(B) If pertaining to non-civil service civilian personnel of Navy Exchanges or related nonappropriated-fund instrumentalities administered by the Navy Resale System Office, such process may be served on the Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street and Third Avenue, Brooklyn, New York 11232.

(C) If pertaining to non-civil service civilian personnel of Navy clubs, messes, or recreational facilities (nonappropriated funds), such process may be served on the Chief of Naval Personnel, Director, Recreational Services Division (Pers/NMPC-72), Washington, D.C. 20370.

(D) If pertaining to non-civil service civilian personnel of other nonappropriated-fund instrumentalities which fall outside the purview of the Chief of Naval Personnel or the Commanding Officer, Navy Resale Systems Office, such as locally established morale, welfare, and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

(E) If pertaining to non-civil service civilian personnel of any Marine Corps nonappropriated-fund instrumentalities, such process may be served on the commanding officer of the activity concerned.

(b) The Department of the Navy officials designated above are authorized to accept service of process within the purview of 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357,

as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157). Where service of process is offered to an official not authorized to accept it under paragraph (a) of this section, the person offering such service shall be referred to the appropriate official designated in paragraph (a) of this section.

§ 734.4 Responsibilities.

(a) *Designated officials.* Within their respective areas of cognizance as set forth in § 734.3, the designated officials are responsible for the following functions with regard to legal process:

(1) Sending such notifications and directions to the member concerned and his or her commanding officer as may be required.

(2) Obtaining or providing an appropriate review by qualified legal counsel.

(3) Taking or directing actions, temporary and final, as are necessary to comply with 42 U.S.C. 659, as amended (*see* § 734.3(b)), the Marine Corps Manual, Navy Comptroller Manual, and the court's order in the case, and

(4) Apprising the cognizant United States Attorney of the Department of the Navy's disposition, as required, and, in coordination with the Judge Advocate General, effecting liaison with the Department of Justice or United States Attorneys in instances of noncompliance with process or other circumstances requiring such action.

(b) *Command responsibility.* (1) The Commanding officer of the member or employee concerned shall, upon receipt of notification from the appropriate designated official, ensure that the member or employee has received written notification of the pendency of the action and that the member or employee is afforded counseling concerning his or her obligations in the matter, and legal assistance if applicable, in dealing with the legal action to affect his or her Federal pay. The commanding officer shall comply with the directions of the designated official in responding to the legal process.

(2) For the purposes of this part, the Director, Navy Family Allowance Activity, Cleveland, Ohio, will function as the commanding officer with regard to retired Navy military personnel and members of the Fleet Reserve.

(c) *Legal services.* The Judge Advocate General is responsible for the following functions pertaining to legal process within the purview of this part:

(1) Providing overall technical direction and guidance, as required, for all Department of the Navy military and civilian attorneys engaged in reviewing such process or advising on its disposition.

(2) Ensuring, as Director, Naval Legal Sevice, the availability of attorneys in Naval Legal Service Offices who are qualified to advise and assist the designated officials concerning the disposition of legal process, and

(3) Where required, ensuring effective liaison with the Department of Justice or United States Attorneys.

§ 734.5 Administrative procedures.

The designated officials specified in § 734.3, shall, in consultation with the Judge Advocate General and Commander, Navy Accounting and Finance Center or the Commandant of the Marine Corps (FD), as appropriate, establish procedures for effectively executing their assigned responsibilities. Implementing procedures shall conform with 42 U.S.C., 659, as amended, the Marine Corps manual, the Navy Comptroller Manual, and the Federal Personnel Manual.

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

CROSS REFERENCE: For joint procurement regulations of the Armed Forces, see Chapter I of this title.

PART 736—DISPOSITION OF PROPERTY

Sec.

736.1 General.
736.2 Dispositions under contracts.
736.3 Sale of personal property.
736.4 Disposition of real property.
736.5 Disposition of real and personal property under special statutory authority.
736.6 Certification prior to disposition.
736.7 Approval by the Attorney General.

AUTHORITY: Secs. 5031, 6011, 70A Stat. 278, as amended; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 3618, 3678, 3709, 38 Stat. 1084, 44 Stat. 605, 49 Stat. 885, 53 Stat. 811, 54 Stat. 396, 57 Stat. 380, 59 Stat. 260, sec. 27, 60 Stat. 856, sec. 5, 60 Stat. 998, sec. 4, 62 Stat. 286, secs. 7(c), 8(a-b), 62 Stat. 452, 63 Stat. 377, 64 Stat. 1109, 65 Stat. 645, 68 Stat. 832, sec. 501(c)(3), 68A Stat. 163, secs. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 70A Stat. 141, sec. 5003, 72 Stat. 1252, 72 Stat. 1793, sec. 616, 73 Stat. 381, as amended; 31 U.S.C. 487, 628, 41 U.S.C. 5, 31 U.S.C. 686, 686a, 40 U.S.C. 304a, 50 U.S.C. 98-98h, 22 U.S.C. 521, 44 U.S.C. 366-380, 42 U.S.C. 1572, 24 U.S.C. 37, 20 U.S.C. 77d, 15 U.S.C. 328, 49 U.S.C. 1156(c), 1157(a-b), 40 U.S.C. 471 et seq., 42 U.S.C. 1855-1855g, 22 U.S.C. 1611-1613c, 1750 et seq., 26 U.S.C. 501(c)(3), 10 U.S.C. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 38 U.S.C. 5003, 42 U.S.C. 1891-1893, 40 U.S.C. 483a. E.O. 10885, 25 FR 8471, unless otherwise noted.

SOURCE: 25 FR 4674, May 27, 1960, unless otherwise noted.

§ 736.1 General.

Real and personal property under the jurisdiction of the Department of the Navy, exclusive of battleships, aircraft carriers, cruisers, destroyers, and submarines (referred to as warships in this part) and certain public domain lands and mineral interests, may be disposed of under the authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (40 U.S.C. 471), in this part referred to as the Federal Property Act. The Federal Property Act places the responsibility for the disposition of excess and surplus property located in the United States, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands with the Administrator of General Services, and for disposition of such property located in foreign areas, with the head of each executive agency. The Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 of January 21, 1974, (39 FR 2577) provide authority for the disposal of warships as well as other vessels stricken from the Naval Vessel Register. The United States Maritime Commission, however, is authorized to dispose of surplus vessels, other than warships, or 1,500 gross tons or more which the Commission determines to be merchant vessels or capable of conversion to merchant use (40 U.S.C. 484(i)). Accordingly, in disposing of its property, the Department of the Navy is subject to applicable regulations of the Administrator of General Services and the Secretary of Defense, and, in regard to potential merchant vessels other than warships, to determinations of the United States Maritime Commission. In general, property of the Department of the Navy, which becomes excess to its needs, may not be disposed of to the general public until it has been determined to be surplus after screening such property with the other military departments of the Department of Defense and all other agencies of the Government, and after it has been offered for donation to the educational institutions.

(a) Within the limitations indicated in the introductory paragraph of this section, the Department of the Navy is authorized to sell its surplus personal property under the authority of the Federal Property Act and the Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7305), and to report its real property, when excess to the needs of

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the Department of Defense, to the General Services Administration for ultimate disposition by that agency or the Department of the Navy. The Department of the Navy is also authorized to transfer real and personal property to other departments or agencies of the Government, and to sell, transfer and otherwise dispose of certain vessels and other personal property under special statutory authority. Ships other than warships are sold pursuant to the Federal Property Act (40 U.S.C. 484(i)) by the U.S. Maritime Commission if over 1500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. In certain cases, Navy vessels and other property may be transferred or otherwise made available to other agencies without reimbursement (sec. 616, 73 Stat. 381; 40 U.S.C. 483a).

(b) This part sets forth the general procedures and authority with respect to the disposition of property under the control of the Department of the Navy except disposition of property to foreign governments under the authority of such statutes as the Aid to American Republics Act (54 Stat. 396; 22 U.S.C. 521) and the Mutual Defense Assistance Control Act of 1951 (65 Stat. 644; 22 U.S.C. 1611-1613c).

(c) The Department of Defense Disposal Manual and directives issued by the Department of the Navy cover the disposition of all property of the Department including disposition under the Federal Property Act. The Navy Personnel Property Disposal Manual and the Marine Corps Supply Manual contain information and operating instructions for the guidance of field personnel in disposing of personal property at Navy and Marine Corps installations, respectively. Section XXIV of Navy Procurement Directives contains similar information applicable to the disposition of contractor inventory. These publications are available for inspection at the Naval Material Command Headquarters, Washington, D.C.; at the offices of the Commandants of the several Naval Districts; and at various Navy and Marine Corps installations.

[25 FR 4674, May 27, 1960, as amended at 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976]

§ 736.2 Dispositions under contracts.

(a) Contractor inventory (that is, personal property acquired by a contractor under terms vesting title in the Government but in excess of the amount required for performance of a contract) may be sold to the contractor or otherwise disposed of in accordance with the terms and conditions set forth in the contract and applicable Navy instructions. See also Parts 8 and 13 and §§ 30.2 and 30.3 of this title.

(b) Industrial and plant equipment provided by the Government to a contractor for the performance of a contract may, subject to applicable statutory authority and Navy instructions be disposed of in accordance with the applicable contract terms and conditions.

(c) Transfer to nonprofit education or research institutions of title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research is authorized by the act of September 6, 1958 (sec. 2, 72 Stat. 1793; 42 U.S.C. 1892) and implementing regulations (§§ 13.800 to 13.803 of this title).

§ 736.3 Sale of personal property.

(a) The sale of personal property determined to be surplus or foreign excess or for exchange purposes is authorized by the Federal Property Act and regulations of the Administrator of General Services (see § 736.1(a)). Certain vessels stricken from the Naval Vessel Register may be sold under the act of August 19, 1956, (70A Stat. 451, 10 U.S.C. 7305).

(b) Sales are by sealed bid, auction, spot bid or, under limited conditions prescribed by law, negotiated method. A deposit, generally 20 percent of the amount bid, is normally required of each bidder. Awards are usually made to the highest acceptable bidder. Normally property may not be removed from Government control until full payment is made. Arrangements must be made by the successful bidder to remove the property within the time limit prescribed in the invitation to bid or sales contract. The Government re-

serves the right to withdraw any property from sale when in the best interest of the Government.

(1) The Department of Defense has a contact point for any person interested in purchasing surplus Department of Defense personal property within the United States. The contact point is the Defense Surplus Bidders Control Office, Defense Logistics Service Center, Federal Center Building, Battle Creek, Michigan. This office maintains a single bidders list for all military departments. The list is arranged to show each person's buying interests, both geographically and with respect to categories of property. The categories of property (together with an application blank) are listed in a pamplet "How to Buy Surplus Personal Property From The Department of Defense," prepared by the Defense Logistics Services Center, Defense Supply Agency, Battle Creek, Michigan.

(2) Retail sales at fixed prices based on the current market value are conducted by certain Defense property disposal offices.

[39 FR 18442, May 28, 1974]

§ 736.4 Disposition of real property.

(a) Real property, including related personal property, determined to be excess to the needs of the Department of Defense is subject to disposition under the Federal Property Act. In the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense and not required for the needs and the discharge of the responsibilities of all Federal agencies, is generally disposed of by the General Services Administration as surplus property. Exceptions, however, are property worth less than $1,000; certain leases, permits, licenses, easements or similar interests; certain fixtures, structures, and improvements; and other special classes of property which, when determined to be surplus, are disposed of by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers under authority delegated in Title II, Regulations of the General Services Administration, or under special delegations from the Administrator of General Services.

(b) Outside the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense is disposed of directly by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers.

(5 U.S.C. 301, 40 U.S.C. 471-514)

[35 FR 10008, June 18, 1970, as amended at 41 FR 26008, June 24, 1976]

§ 736.5 Disposition of real and personal property under special statutory authority.

In addition to the authority to sell personal property to the general public and to transfer real property to the General Services Administration under the provisions of §§ 736.3 and 736.4, the Department of the Navy has further authority to dispose of personal and real property as described in paragraphs (a) through (h) of this section.

(a) *Disposition to other Government agencies.* The Department of the Navy is authorized to transfer real and personal property to other governmental departments or agencies under statutes applicable to particular agencies, the act of March 4, 1915 (38 Stat. 1084) as amended (31 U.S.C. 686) and, as to certain personal property, under directives of the General Services Administration.

(b) *Leases.* Real and personal property under the control of the Department of the Navy not excess to its needs and not for the time being required for public use may be leased, when the Secretary of the Navy shall deem it to be advantageous to the Government, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public

interest. Such leases shall be for a period of not exceeding five years unless the Secretary determines that a longer period will promote the national defense or will be in the public interest. Such leases are authorized by the act of August 10, 1956 (70A Stat. 150; 10 U.S.C. 2667). Leases of Government-owned real property where the estimated annual rental is more than 50,000 must be deferred for 30 days after reporting the proposed transaction to the Armed Services Committees of Congress in accordance with the act of August 10, 1956 70A Stat. 147), as amended (10 U.S.C. 2662).

(c) *Disposition of strategic materials.* Strategic materials may be disposed of by the Department of the Navy under the authority described in § 736.3 only when such property is excess to the needs of the Department of Defense and when the Director of the Office of Civil and Defense Mobilization (acting through the Defense Materials Service of the General Services Administration) determines that the amounts of such materials to be disposed of are so small as to make transfer thereof under the act of June 7, 1939 (53 Stat. 811) as amended (50 U.S.C. 98-98h) economically impractical, or such materials are not necessary for stockpile requirements determined in accordance with section 2 of said act.

(d) *Disposition of vessels.* Vessels stricken from the Naval Vessel Register may be sold by the Department of the Navy under the authority and subject to the limitations of the Federal Property Act (sections 203(i), 63 Stat. 386, 40 U.S.C. 484(i)) and the act of August 10, 1956, (70A Stat. 451; 10 U.S.C. §§ 7304, 7305, 7307) and Executive Order 11765 (39 FR 2577). However, pursuant to section 203(i) of the Federal Property Act (40 U.S.C. 484(i)), the United States Maritime Commission disposes of vessels, other than warships, if over 1,500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. Vessels may be sold for scrapping or for use under such authority or, if such sale is not feasible, the Naval Ship Systems Command may arrange for the demolition of a vessel and sale of the resulting materials by an authorized selling activity as set forth in § 736.3.

(e) *Exchange of sale of property for replacement purposes.* Under the authority of section 201(c) of the Federal Property Act (40 U.S.C. 481(c)) and of the Armed Services Procurement Regulation, the Department of the Navy is authorized in the procurement of new equipment, to exchange or sell similar items which are not excess to its needs, and apply the exchange allowance or proceeds of sale in whole or part payment for the items procured.

(f) *Donations and loans of personal property.* (1) Certain personal property of the Department of the Navy, including vessels, which become surplus, may be donated or loaned under the authority contained in the Federal Property Act and the act of August 10, 1956 (70A Stat. 453; 10 U.S.C. 2572, 7308, 7545) to:

(i) Schools such as maritime academies or military, naval, Air Force or Coast Guard preparatory schools, designated by the Secretary of Defense as educational activities of special interest to the armed services.

(ii) Accredited schools, colleges and universities and educational institutions which have been exempted from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 and State Departments of Education for use by tax exempt educational institutions. Applications for donation shall be approved by the Department of Health and Human Services and the Administrator of General Services and may be filed with the field representative of the Department of Health and Human Services located nearest the applicant.

(iii) States, Territories, Commonwealths, or possessions of the United States and political subdivisions, municipal corporations, veterans associations, soldiers' monument associations, State museums, and non-profit educational museums, subject in certain cases to the approval of the Curator for the Navy and to objection by a concurrent resolution of the Congress.

(2) Applications other than those to be filed with the field representative of the Department of Health and Human Services shall be filed with the

Department of the Navy and referred to the cognizant Command or Headquarters for action except that applications for vessels and district craft shall be referred to the Chief of Naval Operations, applications for boats to the Naval Ship Systems Command, and applications for barges, floating drydocks, and other floating construction equipment to the Naval Facilities Engineering Command. Detailed instructions with respect to such applications are set forth in the Defense Disposal Manual.

(g) *Disposition of equipment for research.* Under the act of September 6, 1958 (72 Stat. 1793; 42 U.S.C. 1891-1893), equipment purchased with research grant or contract funds may be transferred for the conduct of basic or applied scientific research to (1) non-profit institutions of higher education or (2) non-profit organizations whose primary purpose is the conduct of scientific research. An annual report of such transfers must be made to the appropriate Committees of Congress.

(h) *Assistance in major disaster relief.* Under the act of December 31, 1970, (42 U.S.C. 4401-4485) and subject to directions of the Director of the Office of Emergency Preparedness, certain excess personal property may be utilized for or donated to States and local governments for relief of suffering and damage resulting from major disasters. Surplus property may also be disposed of to States for sale to small business concerns affected by specific disasters such as hurricanes.

[25 FR 4674, May 27, 1960, as amended at 25 FR 11066, Nov. 22, 1960, 26 FR 12158, Dec. 20, 1961; 35 FR 10008, June 18, 1970; 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976; 47 FR 28371, June 30, 1982]

§ 736.6 Certification prior to disposition.

The transfer, sale, or other disposition of a battleship, aircraft carrier, cruiser, destroyer, or submarine shall not be made unless and until the Chief of Naval Operations, in accordance with the act of August 10, 1956 (70A Stat. 452; 10 U.S.C. 7307), has certified that such material is not essential to the defense of the United States.

§ 736.7 Approval by the Attorney General.

Prior to the disposition, either competitively or by negotiation, to private interests of a plant or plants, or other property, which cost the Government $1,000,000 or more if real property, or $3,000,000 or more if personal property (other than a patent, process, technique or invention), or of patents, processes, techniques or inventions, irrespective of cost, the Department of the Navy must notify the Attorney General of the proposed disposal and the probable terms and conditions thereof. Within a reasonable time, in no event to exceed sixty days after receiving such notification, the Attorney General will advise the Department of the Navy, whether, insofar as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. In such cases, the Department of the Navy must obtain from the proposed purchaser information regarding its financial status, the anticipated use to be made of the property and any other information as may be required by the Attorney General; the award or final sale must be delayed until the Attorney General advises of his determination.

PART 737—NAVY PROCUREMENT DIRECTIVES, 1974 EDITION

Subpart A—General Provisions

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AUTHORITY: Issued by the Chief of Naval Material under R.S. 161, §§ 2202, 2301-2314, 70A Stat. 120, 127-133; 5 U.S.C. 301, 10 U.S.C. 2202, 2301-2314; Armed Services Procurement Regulation 1-108, 32 CFR 1.108; Secretary of the Navy Instruction 4200.29 of August 2, 1973, unless otherwise noted.

SOURCE: 40 FR 1402, Jan. 7, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 737.1-100 Introduction.

§ 737.1-101 Purpose of Navy Procurement Directives (NPD).

The Navy Procurement Directive (NPD) (NAVMAT P-4202) is published by the Chief of Naval Material in accordance with the policies and direction of the Assistant Secretary of the Navy (Installations and Logistics) pursuant to the authority contained in SECNAVINST 4200.29 of August 3, 1973. In accordance with § 1-108 of this title, it serves to (a) Supplement the ASPR (Armed Services Procurement Regulations [Subchapter A (Parts 1 through 33) of this title 32] and other Department of Defense publications concerned with procurement, and to (b) promulgate at the departmental level policies and procedures concerned primarily with procurement which are not covered by ASPR or other DOD publications.

[41 FR 55511, Dec. 21, 1976]

§ 737.1-102 Applicability of NPD.

The NPD shall apply to all purchases and contracts within and outside the United States made by Navy purchasing and contracting activities with appropriated funds (including available contract authorizations), except as otherwise specified in the NPD or in other directives.

§ 737.1-103 Arrangement of NPD.

§ 737.1-103-1 Arrangement.

As a supplementary directive to the ASPR, the NPD is basically constructed in the same format as ASPR. However, where there are no corresponding ASPR numbers, NPD subjects are generally confined within the same ASPR Section or Part, as appropriate. It will be noted that gaps exist in the NPD numbering system. These gaps represent ASPR paragraphs which are not implemented in the NPD.

§ 737.1-105 Amendment of Regulations.

§ 737.1-105-1 Recommended changes to NPD and ASPR.

Procurement personnel at all levels, particularly the contracting level, are invited and encouraged to submit proposed changes based on operating experience, for reducing administrative burden, simplifying and standardizing contract forms, and improving contracting procedures in general. Such suggestions shall be submitted via the cognizant Head of the Procuring Activity to the Chief of Naval Material (MAT 021) for consideration for inclusion in the NPD or ASPR. Recommendations for changes should be accompanied by a proposed draft of the revision or addition. Those suggestions which are applicable to the other Departments will be forwarded by the Chief of Naval Material to the ASPR Committee for action, via the Assistant Secretary of the Navy (I&L).

§ 737.1-105-2 Amendment of NPD.

The NPD will be revised, as necessary, by issuance of printed loose-leaf revisions published periodically. The Chief of Naval Material will coordinate with the Chief of Naval Operations the Chief of Naval Research and the Commandant of the Marine Corps all proposed NPD changes that involve matters of policy or significant actions affecting their respective areas of responsibility.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55511, Dec. 21, 1976]

§ 737.1-105-3 USEUCOM Supplement to ASPR.

(a) In the consideration of proposed additions and changes to the USEUCOM Supplement to the ASPR, the representative of the Department of the Navy on the Offshore Procurement Policy Coordinating Committee (OSP-PCC) represents all purchasing activities of the Department of the Navy located in the area to which the USEUCOM Supplment is applicable. Accordingly, such Navy representative shall inform the Navy purchasing activities concerned of significant proposed additions and changes to the Supplement and afford them an opportunity to express their views thereon. When the Navy representative on the OSP-PCC considers that the ASPR Committee should consider any dissenting Navy views with respect to proposed additions or changes to the USEUCOM Supplement that are concurred in by the OSP-PCC, he shall submit such views in writing to the Chairman of the OSP-PCC with the request that they be forwarded to the ASPR Committee with the proposed additions and changes.

(b) Legal advice and assistance in connection with the USEUCOM Supplement and other OSP-PCC matters will be provided by the Office of the General Counsel, European Branch, London.

§ 737.1-107 Distribution of ASPR and NPD materials.

(a) [Reserved]

(b) The ASPR, NPD and Revisions thereto may be purchased by the public on a subscription basis from the Superintendent of Documents, Attn: Mail List Section, Government Printing Office, Washington, D.C. 20402. In addition, the ASPR Supplements (ASPS) and ASPR Manual (ASPM) are also available from the Government Printing Office at a separate cost.

(c) NPD Revisions are effective within the Department of the Navy upon receipt unless otherwise specified in individual NPD Revision.

§ 737.1-108 Publications of the military departments.

(a) *The Navy Directives Issuance System.* Although the NPD is the basic procurement publication issued at the Departmental level for the Department of the Navy, policies and procedures pertaining to various aspects of procurement and related matters are also contained in the Navy Directives Issuance System and in other Departments of the Navy publications. Additional information supplementing the NPD and ASPR are promulgated by instructions and notices in accordance with the Navy Directives Issuance System.

(b) *Other Navy Publications.* In addition to the NPD and the Navy Directives Issuance System, other Navy publications, as listed below, provide additional guidelines to procurement personnel in the administration of Navy procurement:

(1) *NAVCOMPT MANUAL* (NAVSO P-1000). A manual of accounting and disbursing procedures.

(2) *Field Purchasing* (NAVSUP Publication 467). Publication provides purchasing information and instructions applicable to all activities of the Navy Field Purchase System. It also contains detailed policies and procedures for small purchasing.

(3) *Incentive Contracting Guide* (NAVMAT P-4283). A guide to improve incentive contract structuring and administration techniques. It provides guidelines for pricing arrangement and the proper selection and application of various contract types.

(4) *Navy Contract Law* (NAVEXOS P-1995). A volume, originally prepared as part of the Navy Contract Law Course, containing a series of articles affording background information on Navy procurement practices and organization and covering various legal aspects of procurement.

(5) *Navy Property Redistribution and Disposal Regulations.* (i) Navy Personal Property Disposal Regulation (NAVSUP Publication 488).

(ii) Navy Facilities Engineering Command Publication No. 73—Real Estate Administration.

(6) Department of the Navy Publications and Printing Regulations (NAVSO P-35). This publication, issued on approval by the Navy Publications and Printing Policy Committee, interprets, implements, and supplements the laws pertaining to publications and printing, Regulations of the Congressional Joint Committee on Printing, Bureau of the Budget circular letters, and decisions of the Comptroller General, and provides mandatory regulations on the content, format, preparation, production, procurement, and distribution of Department of the Navy publications and printing and related equipment and supplies. (See § 737.1-201(c) (iv), and (vi), Definitions; § 737.1-454, Responsibilities of the NPPS; § 737.5-601, Procurement of Printing and Related Supplies.)

(c) *Publications by Procuring Activities.* (1) Subject to the provisions of § 1.108, procuring activities of the Department of the Navy may issue procurement directives, instructions and other publications to supplement ASPR, the NPD and other Departmental publications.

(2) Implementation by procuring activities shall consist of providing for such delegations of authority and assignments of responsibilities and only such other implementing actions as are essential to the procurement operations of the respective procuring activity. In areas which are not fully covered by ASPR and the NPD, each procuring activity may, consistent with the provisions of ASPR, the NPD and other Department of Defense and Departmental publications, maintain and issue such policies and procedures as are necessary for the efficient performance of procurement operations.

(3) Procuring activities shall include the Chief of Naval Material (MAT 021) in the distribution list for two copies (in addition to normal distribution) of all procurement directives. These directives shall include instructions and notices in the Navy Directives Issuance System, as well as other publications of a directive nature which pertain to procurement.

(4) To reduce the volume of regulatory material issued at the procuring activity level, suggestions should be made to the Chief of Naval Material (MAT 021) as to areas where policy and procedures are now lacking and

which would be beneficial for promulgation at the Departmental level.

(d) *Defense Contract Administration Services Publications.* Selected publications issued by the Defense Contract Administration Services (DC-AS), Defense Supply Agency, governing the operations of its contract administration offices are distributed to major purchasing activities, contract administration offices, and other activities involved in the acquisition of supplies and services from private industry. These publications are listed in the microfiche edition of NAVSUP Publication 2002, the Navy Stock List of Publications and Forms, Section III, under Stock Numbers beginning with 0528, and copies are available from the Naval Publications and Forms Center, Philadelphia, Pa. Recommendations for additions or deletions to the list or inquiries concerning their distribution should be addressed to the Chief of Naval Material (MAT 024).

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55511, Dec. 21, 1976]

§ 737.1-109 Deviations from this regulation and Department of Defense publications governing procurement.

§ 737.1-109-1 Applicability.

The provisions of § 1.109-1 defining deviations from ASPR and other Department of Defense publications governing procurement shall apply also to the NPD and other Departmental procurement regulations and forms.

§ 737.1-109-2 Deviations from ASPR and other DOD (publications affecting one contract or transaction).

The Chief of Naval Material is authorized to grant or deny requests for deviation from the mandatory provisions of ASPR or other DOD directives when the deviation affects only one contract or a single transaction in connection with one contract. Such requests may be included in the "Request for Authority to Negotiate (RAN)" when a Determination and Findings by the Secretary is required by § 3.302. The approval of the RAN in such cases will constitute approval of the deviation. The RAN shall contain all the data required by § 1.109-5. Requests for deviations involving technical data provisions of Part 9, subpart B, shall be processed in accordance with § 9.202-3(a); see also § 737.1-109-52.

§ 737.1-109-3 Deviations from ASPR and other DOD publications affecting more than one contract or contractor.

Requests for deviations from ASPR and DOD directives affecting more than one contract or contractor will be forwarded by the Chief of Naval Material for approval of the Assistant Secretary of Defense (I&L), via the Assistant Secretary of the Navy (I&L), or the Chief of Naval Material may deny such requests without forwarding the same. Approval by the Assistant Secretary of Defense (I&L) will generally be sought through the unanimous approval of the ASPR Committee. The deviations shall not be effective until receipt by the requesting activity of notification of approval of the Assistant Secretary of Defense (I&L). For purposes of this § 737.1-109, requests for deviations involving basic agreements or master-type contracts are considered to involve more than one contract.

§ 737.1-109-4 Deviations required by Government-to-Government agreements.

The provisions of § 1.109-4 pertaining to deviations from ASPR required by Government-to-Government Agreements shall also apply to deviations from NPD required by Government-to-Government Agreements.

§ 737.1-109-5 Requests for approval of proposed deviations.

In originating or forwarding a request for deviation, the request shall be signed by the Head of the Procuring Activity, by the Director of Contracts or by the Deputy Director of Contracts. A request for deviation originating from a field activity shall be signed by the Commanding Officer, the Supply Officer, or the Director of Procurement of the field activity concerned and forwarded to the Head of the Procuring Activity for further action.

§ 737.1-109-50 Deviations from the NPD and other departmental publications.

The Chief of Naval Material is authorized to grant or deny any request for deviation from the mandatory provisions of the NPD or other Departmental publications governing procurement.

§ 737.1-109-51 Deviations from maximum fee limitations.

Requests for deviations from the maximum fee limitations set forth in § 3.405-4(c) and § 3.405-5(d) shall be submitted to the Chief of Naval Material (MAT 022) for approval (i) as part of the prenegotiation business clearance, when clearance submission to NAVMAT is required, or (ii) in letter form, if business clearance submission to NAVMAT is not required, and (iii) shall contain the data prescribed by § 1.109-5.

§ 737.1-109-52 Deviations involving patents, copyrights and technical data.

Requests for deviations involving patents, copyrights, technical data, and related matters shall be forwarded to the Chief of Naval Material via the Chief of Naval Research (Code 300). Requests by the U.S. Navy Aviation Supply Office for such deviations shall be forwarded via (a) the Naval Air Systems Command (Patent Counsel) and (b) the Chief of Naval Research (with a copy, including all endorsements, to the Naval Supply Systems Command (Code 022)). In the case of any proposed deviations from the Patent Rights clause for research and development contracts relating to atomic energy (§ 9.107-7), the Chief of Naval Research shall obtain the necessary consent of the Department of Energy before forwarding such requests to the Chief of Naval Material. As to proposed deviations from technical data provisions of Part 9, subpart B, see § 737.1-109-2.

[40 FR 1402, Jan. 7, 1975, as amended at 47 FR 28371, June 30, 1982]

§ 737.1-109-53 Other deviations from the mandatory provisions of ASPR, DOD directives, NPD and other departmental publications.

All other requests for deviations from the mandatory provisions of ASPR or other DOD Directives, NPD and other departmental publications shall, except as provided in § 737.1-109-2, be forwarded for approval to the Chief of Naval Material (MAT 021), as far in advance as possible. Field purchasing activities shall forward all such requests via the Head of the Procuring Activity exercising technical control over the purchase function.

§ 737.1-109-54 Contents of proposed deviations.

The provisions of § 1.109-5 pertaining to the contents of a request for approval of a proposed deviation from ASPR shall also apply to a request for approval of a proposed deviation from NPD.

§ 737.1-109-55 Control of deviations.

A record of all approved deviations will be maintained by the Chief of Naval Material (MAT 021). Each approved deviation shall be assigned a control number consisting of fiscal year and serial number, e.g., Deviation Control No. 68-1. This control number shall be included in the document authorizing the deviation and will be cited in all future references to this deviation.

§ 737.1-111 Reports of suspected criminal conduct and noncompetitive practices, kickbacks, and other procurement irregularities.

§ 737.1-111-50 Fraud in connection with procurement and property disposal.

(a) Where management is alert to its responsibilities in maintaining appropriate safeguards against the commission of fraud in the procurement and disposal of government property, it can more effectively protect the government property, it can more effectively protect the government against the type of fraudulent actions described in SECNAVINST 4385.1 series.

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(b) Heads of procuring activities (§ 1-201.14 of this title) shall assure that the procedures set forth below to assure integrity in procurement operations and disposal of government property are followed by activities reporting to them:

(1) Perform periodic, selective reviews of procurement and property disposal operations and related areas to determine that an adequate system of checks and balances has been provided. Reviews shall include, but not be limited to, such areas as determination of requirements, preparation and adoption of procurement specifications and standards, qualification approval, solicitation and evaluation of bids and proposals, cost/price analysis and negotiations, award of contract, ordering under open-end procurements, contract administration, contract termination, receipt control, administration of payment, transportation, inventory control and sale and disposal of government property.

(2) Conduct frequent spot-checks to determine:

(i) Compliance with existing safeguards by all military and civilian personnel, and

(ii) The need for possible modification of existing procedures as a result of changed conditions.

(3) Assure that all personnel fully understand the distinctions that have been drawn between proper and improper modes of conduct as defined in SECMAVINST 5370.2 series (Part 721 of this title). Provide opportunities for meaningful discussion, placing special emphasis on conflict of interest matters of the issues involved.

(4) Identify for special management attention those positions requiring continued, close association with the contractor or his representatives and involving duties or decisions which strongly affect the contractor's interest.

(5) Consider adherence to high standards of integrity in selecting personnel for promotion and in making assignments to key positions.

(6) Take prompt administrative steps or assist appropriate authorities in criminal or civil actions against military and civilian personnel involved in fraudulent activites. Similarly, provide necssary assistance and information in reply to inquiries concerning suspected wrong-doing or abuse of authority. In this regard, forthright cooperation with the Federal Bureau of Investigation and the Naval Investigative Services is essential.

[41 FR 55511, Dec. 21, 1976]

§ 737.1-111-51 Reports under the gratuities clause.

(a) In implementation of the Gratuities clause in § 7.104-16 where a Navy procuring activity has reason to believe that a gratuity (in the form of entertainment, gifts or otherwise) was offered or given by a contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Navy contract (other than a contract for personal services) or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract, the procuring activity having cognizance of the contract shall forward a full report of the alleged infraction, properly documented, to the Chief of Naval Material (MAT09G). After review of the information in such report, the Chief of Naval Material, when in his opinion the facts of the case warrant, is authorized to schedule the matter for hearing in accordance with the provisions of "Rules for Notice and Hearing under the Gratuities Clause" (ASPR Appendix D) and this NPD.

(b) The Chief of Naval Material may establish, at such time as he deems proper, a board to give notice of hearings, to conduct hearings, and to make the findings of fact and recommendations provided for in ASPR Appendix D. The Board shall consist of a chairman and two other members, one of whom shall be a person trained in the law, and will be given an appropriate designation by the Chief of Naval Material. In the performance of its functions, the board shall have all the authority conferred on the Secretary of the Navy by statute or by the prescribed contract clause and all actions of the board in this respect shall be in

accordance with the provisions of ASPR Appendix D.

(c) Paragraph 14 of ASPR Appendix D reserves to the Secretary of the Navy the final decision as to what remedies the Government may pursue in the event an infraction of the Gratuities clause is found to have occurred.

§ 737.1-113 Standards of conduct.

§ 737.1-113-2 Organization conflicts of interest.

A copy of the solicitation notice and of each clause incorporated in a contract implementing the policy set forth in § 1.113-2 shall be forwarded to the Chief of Naval Material (Mat 021).

§ 737.1-200 Definition of terms.

§ 737.1-201 Definitions.

(a) As used throughout the NPD, the words and terms defined in § 1.201 have the same meanings as set forth in § 1.201, unless (i) the context in which they are used requires a different meaning, or (ii) a different definition is prescribed for a particular NPD Section, paragraph, or portion thereof: *Provided,* That when authority is delegated to, or action is required of, a "procuring activity" or "The Head of a Procuring Activity" those terms shall refer only to Navy procuring activities and to Heads of Navy Procuring activities as identified in §§ 1.201-14 and 1.201-7, respectively.

(b) Definitions in ASPR which apply only to a particular portion of the NPD.

(c) As used in the NPD:

(1) "Navy" refers to the Department of the Navy, including the Marine Corps;

(2) [Reserved]

(3) "Contracts division" and "contract division" (whether or not the initial letters are capitalized), when used in connection with a procuring activity or field purchasing activity not having a division so named, means the division, branch or other organizational entity, equivalent to the contract division of a system command, in which contracting officers operate to place contracts for the activity.

(4) *Publications* include, but are not limited to, end items of printing as defined herein, and any book, pamphlet, directive, form, manual, folder, brochure, periodical magazine, newspaper, microcard or other microform, technical report, chart, poster, map, drawing, tag, placard, or blankbook, printed by or for the Department of the Navy, regardless of content, format, quantity, distribution, or intended end use. (*Exception:* Publications produced by suppliers and regularly carried as stock items for commercial sale or use are not included in this definition.)

(5) *Printing* includes and applies to the processes of composition, platemaking, presswork, and binding; the equipment used in such processes as cited in Navy Publications and Printing Service directives; and the end items, with exceptions as noted above, produced by such processes and equipment. *"Composition"* includes the production of text, display, tabular matter, and similar graphical/lexical information or data on film, paper, tape, or other materials by manual or tape-operated cold type composing equipment, photographic/electronic character generating equipment, photo-typesetting equipment, tape-operated keyboards, typecasting machines, and typesetting machines. *"Platemaking"* includes the photographic or other production of negatives, positives, and other materials required to transfer graphic information or data to presswork printing plates. *"Presswork"* includes the mass production of copies by lithographic, letterpress, flexographic, gravure, rotogravure, silk screen, engraving and counterpart embossing equipment, and similar mass production equipment and operations necessary to complete production, such as collating, gathering, folding, cutting, trimming, perforating, padding, stitching, punching, drilling, and sewing.

(6) *Duplicating* includes and applies to the limited production of end items by use of certain types of equipment as cited in Navy Publications and Printing Service directives. No more than 5,000 8×10½ in. production units may be duplicated of any one page (one side of one sheet). Duplicating of

end items consisting of two or more pages may not exceed 25,000 8×10½ in. production units in the aggregate. The content, editorial and physical format, and distribution of duplicated items shall be in accordance with public law and regulations governing printed items. (See also § 737.1-108-51(c)(v), NAVSO P-35; § 737.1-454, Responsibilities of the NPPS; § 737.5-601, only to paragraphs (4), (5) and (6) of this section.)

(7) "Field contract administration office" as used in this NPD means one of the Army, Navy, Air Force or DCAS contract administration Services Components (DOD 4105.59H). Such an office is also referred to as a contract administration service (CAS) component.

(8) "Administrative Contracting Officer (ACO)," insofar as Navy field contract administration offices are concerned, is the Commanding officer officer-in-charge who is currently a contracting officer (§ 1.201-3 of this title). The term also includes any authorized representative of the Commanding officer officer-in-charge acting within the limits of his contracting officer authority.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55511, Dec. 21, 1976]

§ 737.1-300 General policies.

§ 737.1-302 Sources of supplies and services.

§ 737.1-302-2 Proposal evaluation and source selection.

SECNAV Instruction 5000.1 (Subj: System Acquisition in the Department of the Navy) of 13 March 1972, establishes Department of the Navy procedures and policies on evaluation of competitive proposals and source selection. Activities and contractors may obtain a copy of the Instruction by submitting a letter request to the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120.

§ 737.1-320 Industrial security.

(a) *General.* Security cognizance for contractor facilities participating in the Defense Industrial Security Program (DISP) is assigned to the Defense Supply Agency. Security assignments are made on a geographic basis and security cognizance is exercised by the various Defense Contract Administration Services Regions (DCASRS). The geographical areas of responsibility are listed in Appendix VII to the DOD Industrial Security Manual, DOD 5220.22-M. Procuring activities shall be familiar with the DOD Information Security Program Regulation (DOD 5200.1R) with Department of the Navy Supplement (OPNAVINST 5510.1 Series), the DOD Industrial Security Regulation, DOD 5220.22-R (promulgated by OPNAVINST 5540.8 Series), as well as the DOD Industrial Security Manual and when appropriate, the Cryptographic Supplement to the Industrial Security Manual, DOD 5220.22-S when transmitting classified information to contractors.

(b) *Contract Administration Services Components Industrial Security Responsibilities.* Although DSA administers the DISP for the Department of Defense, under the DOD Plant Cognizance Program, Navy Contract Administration Services (CAS) components (see DOD 4105.54-H for list of activities) perform those ACO industrial security functions normally performed by the DCASRC where the Navy has cognizance. These ACO industrial security functions are contained in the Industrial Security Manual and the Regulation. An abbreviated listing of responsibilities may be found in Appendix C of the Industrial Security Regulation.

§ 737.1-321 Warning notation on classified matter distributed to industry.

(a) Article 4-603, DOD Directive 5200.1-R, July 1972 (Information Security Program Regulation), Article N4-603, OPNAVINST 5510.1D Sep 1972 (Navy Supplement to DOD 5200.1-R and paragraph 11.b(1) of the Department of Defense Industrial Security Manual for Safeguarding Classified Information (Attachment to DD Form 44) require the following notation to be affixed to classified matter when disseminated outside the Executive Branch of the Government.

"NATIONAL SECURITY INFORMATION"

"Unauthorized Disclosure Subject to Criminal Sanction"

(b) The proper marking of classified matter is the responsibility of the originator and the activity making the distribution. Under the provisions of Article N15-204 of OPNAV Instruction 5510.1D, it is permissive to transmit matter classified Confidential or Secret direct to the contractor; therefore, if subject notation is not made by the originator or the activity making the distribution, it is received by the contractor without the notation being affixed. However, field offices having Industrial Security responsibility as "via" addressees, shall review classified matter received from other activities for correctness of markings and to insert those markings which have been omitted.

(c) Procuring activities and distribution activities of the Department of the Navy that originate and/or distribute classified information to Department of Defense contractors are requested to take necessary action to effect compliance with Article 4-603, DOD Directive 5200.1-R, Article N4-603, OPNAVINST 5510.1D and paragraph 11.b(1) of the Industrial Security Manual for Safeguarding Classified Information.

§ 737.1-322 Disposal of classified data furnished to contractors.

When it is determined by the contracting officer that classified data furnished to contractors in connection with classified procurements is obsolete or in excess of contractual and/or legal requirements, such classified data may be destroyed by the contractor upon written authorization of the contracting officer and pursuant to the Department of Defense Industrial Security Manual for Safeguarding Classified Information (attachment to DD Form 441).

§ 737.1-323 Publication by contractors of financial data invoicing security information.

(a) In order that contractors may disclose a maximum of public information relating to their financial status, consistent with the requirements of security, the Secretary of the Navy prescribes the policies set forth below to govern such disclosure.

(b) Suppliers performing work under contracts which include the Military Security Requirements clause specified in § 7.104-12 shall not publish operating statements or other financial reports which include rates of production, total production, designation of articles, or production processes under such contracts.

(c) Such suppliers may, unless their entire production is comprised of 75 percent or more of the same article, publish their total earning and total production by dollar value only, provided that approximate production by quantity or dollar value of a particular article shall not thereby be disclosed; and provided further, that special restrictions on such publication have not been imposed by the responsible contracting officer because of the extreme secrecy of particular contracts. Publication, where permitted as provided herein, may include the following:

(1) Quarterly statements showing by total dollar value the following:

(i) Orders unfilled or due at the beginning of the period;

(ii) New orders booked during the period;

(iii) Cancellations, adjustments, and cut-backs during the period;

(iv) Orders filled during the period;

(v) Unfilled orders at the close of the period;

(vi) Finished goods on hand;

(vii) Work in progress; and

(viii) Raw materials and supplies (one item);

(2) Quarterly statements of total earnings; and

(3) Annual reports and prospectuses showing by percentage how much of the total dollar sales was derived from goods manufactured through the use of facilities which will not require substantial reconversion for peacetime or civilian use, provided the percentage is not within 25 points of the percentage relationship of any particular classified article's dollar value to the total dollar value of all goods sold by the company.

(d) Notwithstanding the foregoing, the Secretary of the Navy, or the

Chief of Information as his authorized representative may, upon request in particular cases, permit the disclosure of financial information in addition to that provided for in paragraph (c) of this section. Any inquiries concerning the application of the policies herein set forth, or requests for additional disclosure, should be referred to the Office of Public Information of the Department.

§ 737.1-350 Scheduling of procurement.

§ 737.1-350-1 Minimum obligation of funds.

(a) To assure flexibility for changing programs, it is the general policy of the Navy to hold to a minimum the amount of funds under contract obligation, at any one time, for the supplies and services the Navy must buy.

(b) Quantities of supplies or services being procured should meet requirements for a reasonable period of time. To this end, and consistent with the obtaining of reasonable prices, use should be made of indefinite quantity contracts or such other contractual methods for the obtaining of supplies or services when the total requirements are not firm but requirements for a lesser known quantity have been definitely established.

(c) It is not desired that purchases be made in quantities so small that prices are thereby increased or that this policy be applied to purchases which are so small as to render administrative cost disproportionate to results to be achieved.

(d) Procuring activities are permitted wide discretion in the implementation of § 737.1-350-1.

§ 737.1-350-2 Adequate procurement lead time.

(a) The period allowed for the solicitation of bids or offers is an important segment of necessary contract lead time. An adequate solicitation period is essential to obtain effective competition, provide for an orderly procurement process, and assure that resulting contracts are placed at reasonable prices. Accordingly, contracting activities shall ascertain what contract lead time is necessary in advance of deadline dates for final obligation purposes to permit a normal solicitation period. At least once, early in each fiscal year, contracting activities shall formally advise the activities they regularly serve in a contracting capacity of deadline dates for submission of purchase requests.

(b) It is the policy of the Department of the Navy that the procurement lead time essential to obtaining adequate available competition shall not be curtailed for the purpose of obligating annual appropriations. (See also § 2.202-1.)

§ 737.1-351 Preparation and distribution of contractual documents.

§ 737.1-351-2 Referencing publications in contractual documents.

In the preparation of contractual documents, instructions to the contractor shall not be incorporated by reference to publications except in cases where the referenced publication is readily available to the contractor. Otherwise such instructions shall be set forth in the contractual document itself or shall be made available by attaching thereto a copy of the publication or the applicable portion thereof.

§ 737.1-351-5 Copies of contracts requested in Navy MIPR's.

See § 737.5-1106—1.

§ 737.1-351-7 Notification to field contract administrator of the identification of the organizational unit or code within the contracting activity responsible for contract administration functions.

In the interest of improving channels of communications, where a contracting officer anticipates a repetitive need for correspondence or contact between the contracting office and an activity designated to perform field contract administration, the organizational unit or code and its specific area of responsibility within the contracting office responsible for the administration of the contract should be furnished to the field contract administrator by any appropriate means.

§ 737.1-351-9 Delivery status information on procurements for the ILP.

(a) Contracts and purchase orders awarded in support of requisitions for the ILP shall:

(1) Identify the requirement as a separate contract line item or subline item in accordance with § 20.304-2. The applicable requisition number *plus:*

(i) The country and case identifier (MIL STRIP CC 31-32 and 48-50) for FMS (Foreign Military Sales);

(ii) The Record Control/Program/Directive number identifier (MIL STRIP CC 46-50) shall be entered immediately under the line or subline item for GA (Grant Aid). (Navy/Marine Corps ILP requisitions are identified by the letter P or K preceding the requisition number, Army is B, Air Force is D, Defense is T (MILSTRIP CC 30).)

(2) Provide for the designated contract administration services component to distribute to the Navy International Logistics Control Office, Bayonne, New Jersey, a copy of any report or document which indicates an anticipated or actual delay in delivery of line or subline items for the ILP. Copies of such reports distributed to Navy International Logistics Control Office, shall include the requisition number applicable to the line or subline item involved and shall be in addition to any other distribution required by the contract or directives applicable to the contract administration services component.

§ 737.1-352 Limitation on contract amendments for new procurement.

It is the policy of the Department of the Navy to avoid the use of contract amendments for additional quantities as a means of purchasing new requirements of supplies, when such a procedure would result in prolonging the life of the contract beyond the time when final settlement would normally be made. The practice of extending contracts for this purpose has the following undesirable results:

(a) Possible use of obsolete or outmoded forms of contracts;

(b) Possible loss of the rights of the parties in a confusion of paperwork; and

(c) Imposition of unnecessary burdens upon the officer charged with administration of the contract.

§ 737.1-361 Commercial advertising by Navy contractors.

(a) Contractors frequently include in some of their commercial advertisements reference to their participation in Navy programs. Prior to placement of these advertisements the contractor may seek approval thereof from some Departmental office, generally the cognizant field contract administrator. It is the general policy of the Department of the Navy not to object to such advertisements provided they do not:

(1) Directly or indirectly constitute an endorsement by the Department or any member thereof of the contractor's product or service;

(2) Indicate or imply in any manner Departmental preference of the contractor;

(3) Contain reference to contract numbers or other contractual details; or

(4) Disclose classified military information.

(b) Contractors are not required to obtain prior clearance for advertisements. However, any Departmental office that becomes aware of any advertisement which appears to conflict with the conditions of paragraph (a) of this section shall immediately bring it to the attention of the cognizant field contract administration office. The cognizant field office shall take necessary action with the contractor to resolve the matter in consonnance with the aforesaid policy. In the event this matter cannot be resolved to the satisfaction of the cognizant field office, the matter shall be referred by letter report to the Chief of Naval Material (MAT 021). The letter report shall include a statement of all facts and circumstances in sufficient detail to enable the Chief of Naval Material to take appropriate action.

§ 737.1-362 Purchase of liquid carbon dioxide.

(a) As a result of an antitrust judgment certain companies are not permitted to sell or lease liquid carbon dioxide storage tanks and related

equipment if the sale or lease is conditioned on an agreement or understanding that the purchaser (lessor) of the storage tanks will purchase carbon dioxide from either the storage tank supplier or any source designated by the storage tank supplier.

(b) Accordingly, requirements for the furnishing of carbon dioxide storage tanks and the liquid carbon dioxide to fill such tanks shall be solicited, evaluated and awarded independently of one another. The two may be solicited and awarded in the same transaction provided they are identified and evaluated separately.

(c) The solicitation document for these requirements shall stipulate that "all-or-none" bids will be rejected as nonresponsive. Further, the solicitation shall not require that the bidder quote on both items.

(d) Attention is invited to § 5.102-3, which makes mandatory with certain exceptions the purchase of FSC 6830 (which includes carbon dioxide) from Federal Supply Schedules.

§ 737.1-363 Participation by contract administration officers in RFP preparation evaluation of proposals and source selection.

(a) When feasible, contract administration offices shall be requested to review, prior to completion of drafting, the RFP (Request for Proposal), Schedule, General Provisions, Specifications, or other provisions of proposed major weapon systems contracts for the purpose of planning for contract administration and for determining the adequacy of such contractural requirements for contract administration purposes. In addition, contract administration offices may be requested to participate in the technical evaluation of proposals and in source selection, in order to provide guidance to the purchasing activity on contract administration matters and on the ability of the contractor to perform the type of work contemplated. Contract administration offices may also be requested to participate in negotiation. Such participation is in addition to field pricing support provided the PCO (Procuring Contracting Officer) as required by § 3-801 of this Title 32.

(b) The selection of one or more contract administration offices to participate in procurement document preparation, evaluation of proposals and source selection, should be based on the familiarity of their personnel with the kind of weapon system to be procured and/or the likelihood of award to a contractor under their cognizance. Contract administration offices may be requested to participate similarly in procurements for items other than weapon systems when considered necessary by the procuring activity, purchasing office, project manager or requiring activity.

[41 FR 55511, Dec. 26, 1976]

§ 737.1-400 Procurement responsibility and authority.

§ 737.1-401 Responsibility of procuring activities.

§ 737.1-401-51 Responsibility of the Naval Supply Systems Command.

(a) *General.* Only The Naval Supply Systems Command has cognizance of the procurement of materials and services throughout the Department of the Navy for which no other procuring activity, office, or command is otherwise delegated procurement authority.

(b) *Consolidated Bid Room Facilities.* (1) Under the direction of the Naval Supply Systems Command, a common bid room shall be established and operated by the Naval Regional Procurement Office, Washington, for all formally advertised procurements of the Systems Command Headquarters. Bid rooms will no longer be operated by Systems Commanders, except that the Commander, Naval Facilities Engineering Command may operate a separate bid room for formally advertised construction contracts.

(2) Common bid room functions shall be as follows:

(i) Naval Regional Procurement Office, Washington:

(A) Issue invitations for bids, complete with applicable specifications, drawings, and other descriptive data (unless the required specifications, drawings, or descriptive data is to be mailed directly from the Systems

Command to the bidders included on the mailing list for the invitation for bids);

(B) Receive, open and abstract bids; make any determination concerning late bids; annotate retained Abstract of Bids to show award of contract(s) or other disposition;

(C) Supplement the list of bidders supplied by the Systems Command as appropriate; and,

(D) Furnish, or arrange to have furnished, upon request from prospective bidders, bid forms and applicable specifications, drawings, and descriptive data.

(ii) Systems Commands:

(A) Prepare invitations for bids (including assignment of the Systems Commands Procurement Instrument Identification Number and opening date) and submit in a form ready for reproduction;

(B) Furnish NRPO Washington a list of bidders to be solicited and address labels;

(C) Provide in a mailable condition sufficient copies of applicable specifications, drawings, and other descriptive data required for distribution to the initial list of bidders plus copies to satisfy expected additional requests. If desired, specifications, drawings, and descriptive data may be mailed directly by the Systems Commanders concurrently with the issuance of the invitation for bid;

(D) Synopsize proposed procurement and award;

(E) Prepare and furnish to NRPO Washington in a form ready for reproduction any required modification to an invitation for bid;

(F) Evaluate bids, make affirmative determinations of responsibility, and award contracts; and,

(G) Advise Naval Regional Procurement Office, Washington for awards made (or other actions if no award is made under an IFB).

§ 737.1-401-52 Responsibility of Office of Naval Research for research contracts with educational and nonprofit institutions.

Paragraph 5a(12) of SECNAV Instruction 5430.20B of 18 November 1969 is set forth below:

1. The Chief of Naval Research shall be responsible for negotiation, preparation, execution, administration and scientific and technical cognizance of all research contracts with educational and nonprofit institutions. The Chief of Naval Research may authorize other naval activities to assume responsibility for any or all of the aforementioned functions as circumstances warrant. The Chief of Naval Research may assume the responsibilities listed above for development contracts with educational and non-profit institutions at the request of each systems command, bureau or office.

§ 737.1-401-53 Naval Facilities Engineering Command (NAVFACENGCOM) cognizance of public works and civil works.

(a) *Responsibility for Construction.* (1) *Civil Works.* SECNAV Instruction 4860.41A and NAVMAT Instruction 4860.13A make NAVFACENGCOM responsible for construction, including related design, at Navy-owned-contractor operated facilities which would be considered public works or public utilities at a shore activity of the Naval Establishment. Such construction shall hereinafter be called Civil Works.

(2) *Summary of Responsibilities.* NAVFACENGCOM is responsible for the administration of all contracts for Public and Civil Works and for the Civil Works portions of facilities and other contracts, for all construction work otherwise accomplished, and particularly for ensuring that applicable legal requirements have been satisfied and that the work will meet the requirements of the Navy.

(b) *Delegation of Responsibility for Administration of Construction.* Current legislation provides that delegation to another Government agency or bureau of the responsibility outlined in paragraph (a) of this section for public works, as authorized by annual authorization acts, within the United States or its possessions, must be approved by the Secretary of Defense. Where it is considered to be in the best interests of the Navy that such a public works project be administered by a systems command or office other than NAVFACENGCOM, a request shall be forwarded to the Assistant Secretary of the Navy (I&L) via NAV FACENGCOM. Before forwarding a request for delegation of responsibility

for administration of a public works contract, NAVFACENGCOM shall ensure that all arrangements for administering the contract and inspecting the work satisfy the needs of the Government.

(c) *Approval for Use of Cost-Reimbursement Type Construction Contracts.* Current appropriation legislation requires the specific approval in writing of the Secretary of Defense for any cost-reimbursement type contract over $25,000 using funds appropriated for military construction for work to be performed within the continental United States. NAVFACENGCOM shall be responsible for obtaining such clearance. As a rule, such contracts will be executed and administered by NAVFACENGCOM. However, in those unusual circumstances where such a cost-reimbursement type contract is to be executed by a systems command or office other than NAVFACENGCOM the contracting systems command or office shall furnish NAVFACENGCOM with a justification for the use of this method of contracting and shall not execute the contract until notified by NAVFACENGCOM that clearance has been obtained from the Secretary of Defense.

(d) *Other Matters.* Where, pursuant to paragraph (b) of this section, a contract involving construction is being executed or administered by a systems command or office other than NAVFACENGCOM, that other systems command or office shall normally be responsible for the handling of all other matters that arise concerning that contract. However, for construction contracts over $2,000, or other contracts requiring Civil Works over $2,000, NAVFACENGCOM will, on behalf of the other systems command or office, obtain from the Department of Labor, the determination of prevailing wages which must be specified in the contract. NAVFACENGCOM will further furnish such advice and assistance as may be requested and is appropriate. As to the technical and engineering details of the construction, repair and maintenance, other systems commands and offices shall consult with, and comply with the standards of NAVFACENGCOM in accordance with existing directives.

(e) *Administration of Construction Portions of Contracts.* (1) When a contract for construction of Civil Works is made directly between the Department of the Navy and a builder (as distinguished from the contractor who is to operate the facilities) NAVFACENGCOM will be the contracting agency, the work to be financed by transfer of funds from the sponsoring procuring activity to NAVFACENGCOM. However, where the contract is made between the sponsoring procuring activity and the producer, the contract shall specify, by inclusion of the clause in § 737.7-602, the Commander, Naval Facilities Engineering Command as the authorized representative of the sponsoring procuring activity with respect to all functions in relationship to Civil Works.

(2) The functions to be performed by NAVFACENGCOM under this directive shall include approving the selection and compensation of an architect or engineer; approving the selection and fee of a general building contractor; consenting to the placement of any subcontract for Civil Works; approving any plans or specifications; approving of major alterations or increased costs; inspection, supervision, administration of the terms of the contract/subcontract and acceptance of performance. The NAVFACENGCOM may delegate the administration of any aspect of the Civil Works where determined feasible, such as the monitoring of compliance with labor standards requirements. The NAVFACENGCOM has cognizance of all matters relating to the acquisition of real property involved.

(3) Where the same contract includes Civil Works as well as other facilities, such as machine tools, production equipment, actual operation and production, etc., NAVFACENGCOM will have jurisdiction only over the Civil Works construction and installation, acting as the authorized representative of the sponsoring procuring activity. However, in certain instances, it may be determined by mutual agreement between the sponsoring procuring activity and NAVFACENGCOM to be advantageous for NAVFACENGCOM to have jurisdiction over the installation of the com-

plete project including machine tools and production equipment as well as Civil Works. In such instances, upon the specific request of the sponsoring procuring activity, NAVFACENGCOM also has jurisdiction over the installation of the machine tools and production equipment to the extent defined for Civil Works under paragraph (e)(2) of this section.

(4) This directive does not limit the authority of the sponsoring procuring activity to define the scope of the Civil Works project, including the size, capacity, and operating features and characteristics, in the same manner as is exercised with respect to Public Works and Public Utilities by a primary support agency.

§ 737.1-401-54 Responsibilities under coordinated procurement.

See § 737.5-1102 and § 737.5-2000.

§ 737.1-401-55 Contractor claims; policies and procedures.

(a) *General.* The effective development and production of major weapons systems within the policies established by DOD Directive 5000.1 of 13 July 1971 require the teamwork and singleness of purpose that characterizes successful acquisitions. Delay in resolution of contract or claims can produce a serious impact upon the business relationship between the Navy and certain of its major contractors. The following policies and (as applicable) procedures shall apply to major weapon systems procurements and also to contracts for other than major weapon systems.

(b) *Definition.* The term "claim" for the purposes of this § 737.1-401-55 and § 737.1-403-51(b)(2)a(iii) and (b)(2)b (iv) means a request for adjustment of a single contract involving to a significant extent a "constructive change" i.e., a change based on Government conduct, including actions or inactions, which is not a formal written change order but which has the effect of requiring the contractor to perform work different from or in addition to that prescribed by the original terms of the contract—or late or defective Government-furnished property or information. "Claim" does not mean a request for equitable adjustment solely for formal written change orders or price adjustments pursuant to escalation or price redetermination, provisions of Pub. L. 85-804, or other contract assertions or adjustments not enumerated in the preceding sentence. When claims under two or more contracts arise from the same or essentially similar operative facts and are based on the same theory of recovery, such claims shall be treated as a "claim" within the definition provided above.

(c) *Policies regarding submission, entertainment and documentation of claims*—(1) *Prompt, fair and open dealings with claimants.* Acquisition programs must be conducted in a manner calculated to minimize the occurrence of claims. Further, those claims which arise despite appropriate precautions must be resolved as promptly as prudence permits by those most directly involved. The causes of claims must be minimized through realistic planning and contracting, careful attention to the action required to meet the Navy's obligations and tight control over the changes process. Occurrences which may lead to claims must be recognized as they happen and appropriate action initiated promptly. Elements of Naval activities at all levels are expected to face claim situations squarely, report them to the appropriate levels of management, take prompt action to get the facts, make an objective analysis, and seek prompt resolution. Dealings will be fair and open with the expectation of equal consideration from contractors.

(2) *Formal and constructive changes.* (i) In those cases where Navy actions (or inactions) alleged by the contractor, after appropriate evaluation, constitute a change, the Contracting Officer should promptly formalize such constructive change(s) in writing, irrespective of whether the contract contains the "Notifications of Changes" clause, § 7-104.86 of this title. Negotiation and settlement of such changes should be handled in the normal fashion—i.e., in accordance with § 1-406(c)(ix) of this title and the contract's provisions. The procedures outlined in paragraph (c)(2)(iii) of this section are for use on an exception

basis where the contractor has not presented a full disclosure of pertinent facts or a timely determination of Navy responsibility is not feasible.

(ii) With respect to those formal written changes as to which the contractor alleges a factual or other interrelationship with a claim, activities should exert every effort to equitably adjust such changes coupled with allowance for any disruption or delay impact determined to be apropriate by the procuring agency.

(iii) In exceptional cases where disruption, delay or other claimed impacts are known to exist and cannot be currently resolved, the procuring activity may proceed with equitable adjustments covering the inter-related formal changes coupled with usage of qualified release. The qualified release should specifically identity the interrelationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and demonstrate support for a separate equitable adjustment therefor under the contract.

(3) *Rejection of "Total Cost" and "Total Time" Based Claims.* (i) Contractors have occasionally submitted claims based on "total cost" or "total time" approaches, i.e., they have asserted that the government was wholly responsible for all costs incurred in excess of the contract price, or for all delay, without proof that such excess costs or delays were caused by government conduct—not by contractor conduct or by concurrent causes. Yet in changes claims there is a well-established requirement to demonstrate causality between the change and resulting quantum. This derives from the terms of the Changes clause itself: "* * * if any such change causes an increase or decrease in the cost of, or the time * * * for * * * performance of any part of the work * * *" The total cost approach is suspect because it assumes that the contractor's initial contract price was reasonable; that the government alone caused his increased costs; and that the contractor's performance costs were reasonable. Only in few rare cases has the total cost approach been accepted, and then only as a "last resort"—when the contracting officer did not make the sort of equitable adjustment required by the Changes clause and the circumstances allowed the contracting officer, board, or court to *accept* the three fore-going assumptions.

(ii) A claimant filing a total cost or total time based claim has the burden of establishing that there is no other feasible, acceptable basis for computing his increased costs or delays. He must prove that there is no way of correlating government actions and omissions to historical cost elements or even to reasonably substantiated cost estimates. If the contractor fails to sustain this burden, then as a policy matter the Navy should reject any contractor claim premised on a "total cost" or "total time" approach.

(4) *Criteria for submitting, documenting and entertaining claims.* (i) Some contractors have submitted claims, portions or which, upon review, are found to be exaggerated, inflated, or unsupportable. Claims sometimes fail to differentiate between factual and judgmental assertions and to support all assertions with specifically identified evidence. Such submission can delay and frustrate the Navy's claim review, analysis and evaluation. Accordingly, it is necessary to take steps to promote more readily reviewable claim submissions by establishing requirements for the evidentiary documentary documentation of claims and by requiring responsible contractor officials to endorse the claims submitted.

(ii) The general criteria for information required to support claim settlement include the existence of a legal basis for entitlement, facts meeting the elements of proof required to support the basis of entitlement, and adequate factual support for the amounts claimed. The Navy should require a proper claim submission on the basis provided in the changes clause, namely, a basis factually demonstrating documented scopes of work correlated to provable instances or categories of government liability. The Navy should, in all cases, require demonstration of casual support and documentation of quantum, in as much specificity as the facts will permit.

(iii) Claimants should be advised that all claim assertions must be supported by specifically identified evidence (including applicable historical and planned cost and production data from the contractor's books and records), and that opinions, conclusions or judgmental assertions not supported by such evidence, or by a sound and reasonable rationale, which is fully discussed, are without probative value and unacceptable.

(iv) An individual DD Form 633-5 shall be submitted for each element of a contractor's claim at the time of the initial claim submission, for any material revision of the claim, and prior to the execution of a settlement agreement on the claim.

(v) The Navy should require, at the time of initial submission of a claim an affidavit, as follows:

I, ——*, the responsible senior company official authorized to commit the ——** with respect to its claim dated ——, under contract(s) ——, being duly sworn, do hereby depose and say that, to the best of my knowledge and belief: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Navy is allegedly liable.

———————————

(Signature)

*Name and title of company official signing affidavit. In a large company, signature by the head of a plant or division is acceptable, if such individual is authorized to commit the corporate entity which is a party to the contract under which the claim is asserted.

**Name of corporate or other business entity submitting claim.

Unless otherwise authorized in writing by NAVMAT, claim evaluations should not commence until an appropriate affidavit has been received.

(vi) Since the burden of proof of a claim rest with the claimant, the Navy should reject any claims which fail to meet *any* of the requirements set forth in this paragraph (c)(3) of this section. The rejection should be accompanied by an indication to the claimant of the areas or types of deficiencies which form the basis for the rejection. Claimants may be given an opportunity to resubmit such claims in the proper manner, unless it is apparent from the contractor's submission that the claim is without foundation.

(vii) If, after resubmission of an initially rejected claim, and thorough review and evaluation thereof by the Navy, the parties are unable to agree upon a settlement of the claim, the Navy should not normally entertain another claim resubmission. Instead, the contracting officer should issue a final decision determining to what extent, if any, the claim is acceptable to and what extent it should be denied. This decision is subject to the notice, review and approval requirements provided in (e) of this section.

(viii) Where contractor actions or inactions are likely to result in a claim or to delay timely and equitable resolution of claim issues, or contract performances may be impaired, higher level assistance will be promptly sought. (See also § 737.1-950(e)(5) and (f).)

(d) *Documentation of Significant Contract Events.* (1) *General.* Proper resolution of contractor claims is dependent upon the adequacy of both the available contractor and Government information concerning the relevant facts. Effective presentation and analysis of a claim requires the contractor to reconstruct events, actions, circumstances and conditions that may have taken place long since. This reconstruction process is complicated by the impact of other past transactions and events that are not germane to the issues involved and must be separated therefrom. Adequate documentation is the key to the Government's ability to verify, qualify or refute matters which a contractor presents in support of, or as the basis of, his claim.

(2) *Applicability.* A record of significant events, in accordance with paragraphs (d) (3), (4) and (5) of this section, shall be maintained by the Contract Administration Office with respect to:

(i) All contracts in excess of $5,000,000; and

(ii) All contracts, regardless of dollar amount, concerning which the officer in charge of the contract administration office has determined a reason-

able possibility exists that a claim may be asserted thereunder.

(3) *Record of Significant Events.* Field Contract administration offices shall maintain, on a continuing basis (daily when necessary), a record narrative summarizing significant events as they occur during the performance of each contract specific in paragraph (d)(2) of this section. The record shall document events as prescribed in paragraph (d)(4) of this section with the type of information described in paragraph (d)(5) of this section. The record shall be supplemented by photographs, references to key documents, or other information as necessary and appropriate, to assure a complete and independent record of contractor performance in the event of subsequent claims.

(4) *Events to be Documented.* The significant events documented shall include, but shall not be limited to, those matters which have a bearing upon the following areas:

(i) Delivery schedule changes or problems;

(ii) Drawings, designs and specifications which are ambiguous, defective or impossible of performance;

(iii) Differences in interpretation of contract provisions;

(iv) Delay and disruption of contractor effort;

(v) Changes in method or sequence of work;

(vi) Late or defective Government furnished property or information;

(vii) Rejections, rework, waivers and deviations;

(viii) Planned vs. actual performance milestones;

(ix) Delays in Government actions such as processing engineering change proposals, consent to subcontracts and review of technical data;

(x) Contractor error and non-compliance with contract terms; and

(xi) Any other Government actions or inactions (excluding formal written change orders) which have the effect or requiring the contractor to perform work different from that prescribed by the original terms of the contract.

(5) *Type of Information.* To the extent applicable, the following information concerning each event recorded shall be provided:

(i) The nature and pertinent circumstances of the event;

(ii) The date of the event and the identification of Government and contractor personnel involved, including name and function of the respective individuals;

(iii) Identification of any relevant document involved;

(iv) The substance of any oral communications; and

(v) A statement concerning the possible consequences or effects of the event described upon the contract cost, schedule, or technical performance, including manner or sequence of performance.

(6) *File Maintenance.* The records concerning significant events shall be kept in a separate folder or folders for each contract and identified as the "Significant Events File." Those records which are already maintained separately as part of the contract file in accordance with ASPR S2-102.2 need not be included in the Significant Events File. Where pertinent documents needed to complete the record are located elsewhere than in the contract file, copies of such documents or cross-references thereto, shall be included in the Significant Events File. All non-factual information (i.e., opinions and conclusions expressed by any representative of the Contract Administration Office, and privileged, legal advice of counsel) contained in the Significant Events File shall be marked "FOR OFFICIAL USE ONLY."

(e) *Claim Reporting Review and Approval Requirements and Procedures.*—(1) *Initial Claim Reports.* Cognizant procuring activities shall report to the Chairman, NMC Claims Board (MAT 02B) all contractor claims which exceed a procuring activity's clearance dollar threshold set forth in § 737.1-403-51(b)(1) no later than one (1) week following receipt of the written claim from the contractor. All field procuring installations reports shall be forwarded via the cognizant Command to the Chief of Naval Material (MAT 02B). Claim reports shall be in the following format:

(i) Contractor's name.

(ii) Contract number; supplies or services procured; contract price, target price or estimated total cost.

(iii) Amount of claim, and date written claim received.

(iv) Alleged basis of claim (e.g., species of constructive changes, etc.).

(v) Participating activities or agencies (e.g., USAF, by MIRP).

(vi) Assessment of validity of claim, where possible.

(vii) Planned handling and disposition of claim. Reports shall not be delayed to obtain information elements (f) or (g). Further, procuring activities shall maintain similar records for claims below their reporting threshold.

(2) *Follow-Up Claim Reports.* At the end of each fiscal quarter, procuring activities which submitted initial Claim Reports shall submit to the Chairman, NMC Claims Board (MAT 02B) summary Follow-Up Claim Reports including the foregoing seven elements of information for each reported claim and shall supplement information element (g) with a milestone plan of action to dispose of the claim and comments on progress in such disposition. In addition, explain all changes of dollar amounts of claims under review, or before the ASBCA or Court of Claims from the prior quarterly report. After each such claim is resolved, as provided in paragraph (e)(3) of this section, the procuring activity shall submit a final report containing the amount and factual conclusions supporting settlement or contracting officer's decision, as applicable. Comments should be included with respect to lessons learned and corrective actions taken or to be taken to preclude or to minimize the recurrence of the circumstances leading to the claim.

(3) *Claim Review.*

Amount of claim	Reporting	Review	Approval
Less than clearance dollar value	Within procuring activity	Procuring activity	Procuring activity.
Clearance dollar value or higher, but not more than $10 million.	MAT 02B	NMC Claims Board	MAT 02B.
More than $10 million	MAT 02B	NMC Claims Board then NMC General Board Briefing.	CNM (with ASN (I.&L.) Concurrence).

(i) *NMC Claims Board.* NMC Claims Board members shall consist of procurement executives designated by the Commanders, Naval Air, Sea, Supply, Facilities and Electronic Systems Commands, and the Deputy Chief of Staff for Installations and Logistics, Headquarters, Marine Corps, and shall be chaired by the Deputy Chief of Naval Material (Procurement and Production) or his designated representative. A Deputy General Counsel and a representative of the Navy Comptroller shall be Claims Board advisors.

(A) The NMC Claims Board is an Advisory Board to the Chief of Naval Material. In general, the NMC Claims Board will review contractor claims which exceed a procuring activity's clearance dollar threshold set forth in § 737.1-403-51(b)(1). The NMC Claims Board review will not be required in (*1*) cases involving out-of-court settlement of appeals pending before the ASBCA, (*2*) cases where the ASBCA or Court of Claims has decided entitlement issues but has referred the case back to the Navy for quantum determination, or (*3*) cases on which such review has been waived by the Chief of Naval Material, or by the Deputy Chief of Naval Material (Procurement and Production) (see § 737.1-401-56).

(B) For each final decision of the contracting officer denying in whole or in part any claim requiring review by the NMC Claims Board as prescribed in the preceding paragraph, the proposed decision shall be subject to approval by the Chairman, NMC Claims Board. At the option of a procuring activity, any claim or proposed claim settlement or final decision of the contracting officer below an activity's clearance dollar threshold may be submitted to the NMC Claims Board for review or advice. If a proposed settlement is below the foregoing clearance dollar threshold, the Head of the Procuring Activity is authorized to ap-

prove such settlement. If a proposed decision is below the foregoing clearance dollar threshold but the amount of the contractor's claim exceeds such threshold, the Head of the Procuring Activity must first obtain clearance from the Chairman, NMC Claims Board before issuance of the decision. This HPA authority may not be delegated to any official below the level of Deputy or Assistant Commander for Contracts or Director of Contracts Office or Directorate.

(ii) *Requirement for Legal Memorandum.* The supporting documentation with respect to claim actions submitted to the Claims Board will include a legal memorandum. At a minimum, the required legal memorandum should:

(A) Analyze the applicability and adequacy of the contractor's legal theory or theories of Government liability.

(B) Analyze and evaluate the presence and adequacy of evidentiary facts satisfying the elements of proof required by such legal theory or theories.

(iii) *NMC General Board.* When designated by the CNM, the NMC General Board shall be briefed on proposed contractor claim settlements or contracting officer's decisions which are over $10 million. Prior to such briefing, the NMC Claims Board shall review the proposed action to assure that it is factually and contractually supported. The NMC Claims Board Chairman or his designated representative shall conduct the briefing of the NMC General Board, outlining all pertinent technical, cost and legal information, and presenting the Claims Board's and affected procuring activity's recommendations, and minority or opposing viewpoints, if any. The Chairman, NMC Claims Board shall prepare a decision paper on proposed claim settlements or final decision of the contracting officer for approval or disapproval by the Chief of Naval Material. Each Claims Board designated executive shall fully brief his SYSCOM Commander and the Deputy Chief of Staff, Headquarters, U.S. Marine Corps, as appropriate, on each proposed claim settlement or final decision prior to NMC General Board action.To facilitate the above-mentioned briefings, the SYSCOM and MARCORPS Claims Board member shall prepare and submit an executive summary of the claim settlement or decision to the Chairman, NMC Claims Board (MAT 02B) on all claims in excess of $5 million. Such executive summary shall be furnished promptly after claims settlement or decision is reached by the Command.

(iv) *Commitment and Clearance.* No settlement commitment or final decision shall be made prior to receipt of approval by the NAVMAT official specified above. When a proposed settlement exceeds the procuring activity's clearance dollar threshold, approval of the settlement as provided above shall constitute NAVMAT business clearance prescribed by § 737.1-403.

(v) *Assistant Secretary of the Navy (Installations and Logistics).* At the end of each fiscal quarter, the Chief of Naval Material shall submit a summary of all Naval procuring activity Initial and Follow-Up Claim Reports prepared pursuant to paragraphs (e)(1) and (2) of this section to the Assistant Secretary of the Navy (Installations and Logistics). In addition, the Chief of Naval Material or his authorized representative shall orally brief and secure the concurrence of the Assistant Secretary on each CNM claim settlement action taken if the approved settlement exceeds $10,000,000.

(vi) *Provisional Increases in Contract Prices.* Provisional price increases or provisional payments against claims will be made only in unusual circumstances where essential to continued performance. Primary emphasis should continue to be given to achieving prompt settlement of claims thereby obviating the need for provisional price increases or payments. When provisional increases in contract prices are deemed necessary, they will be submitted to the NMC Claims Board for approval prior to contract modification. The justification will include:

(A) Necessity for provisional price increase or provisional payment in relation to overall corporate financial requirements;

(B) Legal memorandum of contractor's entitlement to some compensation;

(C) Contracting officer's determination that the amount of ultimate entitlement to compensation will equal or exceed the amount of the proposed provisional price increase or provisional payment;

(D) The extent and results of technical, administrative, and audit review performed;

(E) Projected date of settlement of claim; and

(F) Other pertienent information (e.g. comment as to whether the contractor has reasonably satisfied all requests for documentary and analytical support of the claimed amount).

(f) *Implementation.* (1) Procuring activities shall give wide dissemination to, and implement, the policies and procedures set forth herein, including establishment of the appropriate delineation of authorities within each activity.

(2) The policies stated herein shall apply to all pending and future contractor claims.

(3) Persons and Boards required to review the proposed dispositions of contractor claims in accordance herewith shall assure that the policies established herein were followed in the entertainment and evaluation of the claim under review.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55512, Dec. 21, 1976]

§ 737.1-401-56 Contractor appeals to the Armed Services Board of Contract Appeals (ASBCA); policies and procedures.

(a) *General.* The Office of the General Counsel (OGC) has sole litigation authority for all appeals under Navy contracts to the ASBCA. Because of the frequent complexity of these cases, the Office of the General Counsel and the Command or other procuring activity involved should maintain the continuity of any Navy claim team which might have investigated and evaluated the contractor's claim submission. Such teams should continue to function in an assisting capacity under the leadership of the OGC Trial Attorney assigned to handle the appeal.

(b) *Contracting Officer Decisions.* Copies of all executed contracting officer decisions shall be forwarded, at time of issuance, for appropriate action, to the Contract Appeals Division (CAD) of the Office of General Counsel.

(c) *Contractor Notices of Appeal.* When a notice of appeal in any form is received by the Command or other procuring activity, the Contracting Officer is required by Rule 3 of ASBCA Rules (§ 30.1) to forward it to the ASBCA. This should be done by Command or other procuring activity Counsel on behalf of the Contracting Officer, with a copy to the Contract Appeals Division.

(d) *Documentation Requirements.* The Contract Appeals Division shall be furnished four (4) sets of the documents pertinent to the appeal required by Rule 4 of the ASBCA Rules. The Contracting Officer shall compile these documents promptly with the advice and assistance of Command or other procuring activity Counsel. These Rule 4 documents, which at a minimum should include all of the documents relied upon by the Contracting Officer in reaching a final decision, should be arranged in an orderly fashion (preferably in chronological order), indexed, numbered and tabbed. All pages should be clear and legible. If additional documentation is deemed to be necessary, the Contract Appeals Division shall make the request for such documentation and if it is available, the Contracting Officer shall furnish said documentation with the assistance of Command or procuring activity Counsel. Rule 4 requires that the documents be filed within 30 days after receipt of the notice of appeal. If more time is needed, the Contract Appeals Division shall be advised so that it may request an extension of time from the ASBCA. Such extensions shall be requested only when necessary and not as a matter of course. In field purchasing offices not having assigned Counsel, the Contract Appeals Division will work directly with the Contracting Officer in obtaining the Rule 4 documents. Upon receipt of the Rule 4 documents, the Contract Appeals Division will assume the responsibility for transmitting a copy to the

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Board and for meeting the additional requirements of Rule 4 with reference to the appellant.

(e) *Litigation Report Requirement.* With the compilation of Rule 4 documents, a comprehensive litigation report shall be forwarded to the Contract Appeals Division. At a minimum, the report should include:

(1) A detailed narrative statement of facts preferably in chronological sequence, and with a topical segregation when appropriate, with references to attached supporting documents or expected testimony. If such a statement was previously submitted pursuant to paragraph (d) of this section, it need not be submitted a second time, but should be supplemented or revised if additional information becomes available in the interim.

(2) An analysis and evaluation (classified as attorney-client privileged information) of the factual and legal positions of both sides, the available evidence, and the expertise and effectiveness of prospective witnesses.

(3) The Advisory report, if any, of any Review Board or Panel.

(f) *Team Cooperation.* Commands or other procuring activities shall cooperate with the Contract Appeals Division in connection with the conduct of an appeal. Arrangements for staff assistance and support in the development of the appeals case shall be effected by agreement among Trial Attorney, Command Counsel and the Contracting Officer.

(g) *Matters for Clearance with the Contracting Officer.* The Contract Appeals Division is charged with the responsibility for defending the Navy's case before the ASBCA as contained in the Contracting Officer's final decision. If, during the processing of an appeal, the Contract Appeals Division Trial Attorney considers that any aspect of the Navy's case, as set forth in the final decision, should be abandoned or substantially modified, he shall obtain the concurrence of the Contracting Officer before entering into any stipulation, consent, or other action or disposition with respect to such issue in the Appeals deliberations.

(h) *Settlement Negotiations While Appeal is Pending Before the ASBCA.* The conduct of settlement negotiations in connection with any pending appeal should generally be accomplished by selected team consisting of the Trial Attorney and representatives of the Contracting Office (including Command or procuring activity technical personnel, counsel, negotiator, and auditor if necessary). Other arrangements may be made in specific cases as appropriate. However, no final settlement agreement will be made without the written approval of the Contracting Officer. When a settlement is made, a memorandum shall be prepared by the negotiating team (and signed by all team members) stating the basis and reasons therefor. The settlement agreement shall be drafted by the Command and Trial Attorney. The Trial Attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

(i) *Appeals Case Remanded to Navy for Quantum Determination.* In some instances, the ASBCA will determine that the contractor is entitled to compensation with respect to one or more issues addressed in the Contracting Officer's decision. The ASBCA may then direct that the Navy re-assume responsibility of the claims case for purposes of quantum determination. In all such cases, the Contracting Officer shall arrange for a negotiating team to be established to reach mutual agreement with the contractor with respect to such issue(s). Since the case no longer is considered a pending appeal, the attorney for the negotiating team shall be appointed by the appropriate Command or Bureau Counsel. No final settlement agreement shall be made without the approval of the Contracting Officer.

(j) *NMC Claims Board Reviews.* Negotiated settlements of appeals, pending before the ASBCA, as well as negotiated settlements of Appeal issues which have been remanded to the Navy for quantum determination, will be subject to approval by the Chairman and Legal Advisor of the NMC Claims Board, if the amount of any such settlements exceeds the Command's or other procuring activity's clearance dollar threshold. Proposed

settlements in excess of $10,000,000 require concurrence of the Assistant Secretary of the Navy (Installations and Logistics).

(k) *Contract Modification.* Whenever contract modification and other contract documents are required to implement a settlement or ASBCA or appellate court decision, they should reference the ASBCA proceedings by title and docket number.

§ 737.1-401-57 Navy claims against the contractor.

(a) *General.* In certain instances, a basis may exist for a Navy claim against a contractor. Such claims usually take the form of a demand for an equitable reduction in a contract price or for the repayment of an overpayment. The Navy claims might arise from numerous causes such as identification of contractor failures to perform in accordance with specifications or from defective pricing. Often, these claims arise incident to the factual investigation of a contractor's claim against the Navy, in which case, they are referred to as "counter claims." Regardless of how a claim arises, it is essential that Navy personnel take prompt action to document the bases and reasons for the claim and, when possible, to settle claims by negotiation with the contractor.

(b) *Claim Reporting.* Cognizant procuring activities shall report to the Chairman, NMC Claims Board (MAT 02B) all Government claims which exceed $500,000 no later than one (1) week following assertion of the claim. Claim reports shall include information similar to that required under § 737.1-401-55(e) (1). Follow-up reports shall be submitted quarterly in accordance with § 737.1-401-55(e)(2).

(c) *Claim Documentation.* Government claims shall be thoroughly documented. The same standards of claim documentation required for contractor claims (see § 737.1-401-55(c)) shall also be applicable to Government claims.

(d) *Contractor Appeals.* In the event settlement by negotiation cannot be achieved, a Contracting Officer's decision shall be promptly issued in accordance with the "Disputes" procedure of the pertinent contract. This decision shall set forth the basic facts of the dispute and the details of the Navy's claim against the contractor. In preparing the decision and processing the dispute, when an appeal is taken by the contractor, the appeal procedures outlined in § 737.1-401-56 shall be followed.

§ 737.1-401-58 Assignment of purchase actions by systems commands to field activities within the Navy Field Procurement Systems (NFPS).

(a) *Definition.* The Navy Field Procurement System (NFPS) consists of those field activities of the Department of the Navy, including offices and branch offices, which make purchases under the delegated authority of the Commander, Naval Supply Systems Command NAVSUP Publication 467, "Field Purchasing," identifies those field activities within the NFPS with delegated procurement authority in excess of $250.

(b) *Authority to assign purchase actions.* In obtaining the material and services required for the performance of its assigned mission, each of the systems commands within the Naval Material Command is authorized to request other activities to carry out requisite purchase functions. This authority should not be used for the purpose of assigning to field activities within the NFPS purchase actions that should properly be handled at the Systems Command Headquarters level, e.g., where the contracts directorate of the command may have available capacity or may be in the process of making related purchases.

(c) *Considerations.* The following considerations shall be taken into account in assigning purchase actions:

(1) That the purchase organization at each field activity of the Naval Air, Sea, and Electronic Systems Command has been established to support the research, production, or other technical mission of the particular field activity;

(2) That the central area buying activities of the NFPS are responsible for providing purchase support to the naval activities located in the given area served;

(3) That the Naval Regional Procurement Offices (NRPOs) and Naval Supply Centers assigned regional pro-

curement functions furnish overall procurement and procurement management support for the geographic area served; and

(4) That the activities in paragraphs (c) (2) and (3) of this section, in that order, are responsible for making those purchases which are in excess of either the purchase authority or capability of the activities of the NFPS located within the geographic regions served.

(d) *Procedures.* To establish uniform and more effective methods of assigning purchase actions and task or work orders involving procurement generated by the systems commands named in paragraph (c) (1) of this section, the following procedures shall be followed:

(1) Purchase actions, including purcahse requests, purchase requisitions, Military Interdepartmental Purchase Requests (DD Form 448), task/work orders involving procurement, and other procurement requirements orginated at the Systems Command Headquarters level, shall be reviewed by the contracts directorate. The review shall be conducted to assure the retention by the command of requirements which, because of high dollar value, complexity, or other considerations warrant purchase action at the headquarters level.

(2) The Naval Supply Systems Command (Deputy Commander, Procurement Management) shall be advised in writing at the time a decision is made by a systems command to assign to Navy field purchasing activities new procurement actions that will require business clearances in excess of $1,000,000 or the responsibility for ASPR 3-406, 3-409, or 3-410 type contracts (§§ 3-406, 3-409, and 3-410 of this title) whose total cumulative value is expected to exceed $1,000,000.

(3) When a field purchasing activity receives a purchase action which originated from a systems command and has reason to believe that procurement should be effected at the systems command level, the field activity shall coordinate the matter with the Naval Supply Systems Command (Deputy Commander, Procurement Management) before proceeding with the procurement.

[41 FR 55512, Dec. 21, 1976]

§ 737.1-403 Requirements to be met before entering into contracts.

§ 737.1-403-50 Business clearance.

Business clearance is the required approval by the Chief of Naval Material of the business aspects of proposed contractual actions. Such clearance is required pursuant to authority derived from the Secretary of the Navy and § 1.403. Although there is a regulatory basis for business clearance, the Chief of Naval Material uses also the business clearance procedure as a means of monitoring procurement operations with emphasis on how well those operations are being managed. Request for business clearance is submitted on a business clearance memorandum and consists of two parts as follows:

(a) *Pre-Negotiation Business Clearance.* Upon receipt of the contractors proposals and audit and field contract administration reports, and upon completion of thorough evaluation of technical aspects and price and contract terms, a pre-negotiation business clearance memorandum shall be prepared setting forth all significant details of the proposed contract negotiation and the course the procuring activity proposes to pursue (see § 727.1-403-52). Any major change in the prenegotiation business clearance memorandum proposed by the requisitioning or procuring activity or proposed by an offeror which the procuring activity desires to adopt shall be covered by a revised prenegotiation business clearance memorandum.

(b) *Post-Negotiation Business Clearance.* Negotiation should be undertaken promptly after the Chief of Naval Material approval of the pre-negotiation business clearance memorandum, with the objective of submission of the post-negotiation business clearance within 30 days from the date of approval of the pre-negotiation business clearance memorandum. If negotiations are not completed within 60 days after appropal by the Chief of Naval Material of the prenegotiation clearance, a supplemental pre-negotiation business clearance memorandum is required. Such clearance shall include the reason for the delay and discussion of any pertinent changes that

have occurred since submission of the pre-negotiation clearance memorandum. Upcn completion of negotiation, the post-negotiation business clearance memorandum shall set forth in detail the negotiation results obtained, in accordance with § 737.1-403-52. No commitment shall be made to a prospective contractor prior to obtaining the chief of Naval Material's approval of the post-negotiation business clearance memorandum.

(c) *Waiver of Post-Negotiation Business Clearance.* The post-negotiation business clearance may be waived by the Chief of Naval Material in individual cases. For activities regulated by § 737.1-403-51(b)(1) a and b, the post-negotiation clearance may be waived by the Head of Contracts of the SYSCOM concerned. In the latter case, the Head of Contracts shall forward a memorandum for record to the Chief of Naval Material outlining the reasons for the waiver. While the Heads of Contracts of activities regulated by § 737.1-403-51(b)(1) a and b are not required to obtain approval to waive post-negotiation clearances, they are encouraged to seek guidance from the Chief of Naval Material when circumstances warrant. Generally, such waivers will apply only if the final negotiated position is within the limitations and conditions prescribed by the Chief of Naval Material in its approval of the pre-negotiation business clearance. When a waiver has been granted, a memorandum confirming that the final agreement negotiated was within the limitation prescribed in the pre-negotiation approval shall be forwarded to the Chief of Naval Material except that, if negotiations are not completed within 60 days after approval of the prenegotiation clearance, a supplemental pre-negotiation clearance is required as set forth in paragraph (b) of this section.

(d) *Use of RAN for clearance purposes.* In individual cases of justifiable urgency which necessitate the use of either a letter contract or a CPFF contract to be negotiated under 10 U.S.C. 2304(a)(11) through (16), and the total estimated amount of the contract exceeds the dollar thresholds set forth in § 737.1-403-51(b)(1), Chief of Naval Material business clearance can be requested and granted on a Request fc Authority to Negotiate (RAN) (sc § 737.3-306). This procedure does no relieve the SYSCOM or other procuring activity from providing the information required by § 737.1-403-52 in the RAN. Further, the RAN or APP shall contain a separate paragraph titled "Business Clearance Aspects" containing the information required by § 737.1-403-52.

§ 737.1-403-51 Business clearance requirements.

(a) *Business clearance within the procuring activity.* (1) Each procurin activity shall establish requirements and procedures for written pre-negotiation and post-negotiation business clearance similar to those prescribed in § 737.1-403-50, for procurements and other contract actions between $100,000 and the Chief of Naval Material clearance dollar values, of the type for which the Chief of Naval Material business clearance is required in paragraph (b) of this section.

(2) The business clearance memoranda shall set forth the evaluation of the contractor's proposals and the method by which negotiations are planned to be accomplished and shall be approved within the procuring activity at a level higher than that of the individuals assigned to the negotiations. The results of negotiations shall also be recorded and approved at the same higher level prior to the execution of the contract. This internal approval procedure shall also apply to business clearance procurement actions requiring business clearance from the Chief of Naval Material. This documentation shall be retained in the contract file of the procuring activity concerned.

(3) A copy of each post-negotiation clearance on contract actions obligating less than the clearance dollar values set forth in § 737.1-403-51(b) shall be submitted promptly, together with a copy of the related pre-negotiation clearance, to the Chief of Naval Material for information when such actions will obligate amounts above the following:

(i) For aircraft (airframe) and ship construction procurement: $2,000,000.

(ii) For all other procurements: $1,000,000 ($600,000 for activities regulated by § 737.1-403-51(b)(1)e).

(4) If a contract is to be awarded by an activity regulated by § 737.1-403-51(b)(1)e below, and is to include special clauses not authorized for general use which may affect the contract price, the information specified in § 737.1-403-52(a)(1)(i)(K), together with a copy of the procuring activity's pre- and post-negotiation business clearance, shall be furnished to the Chief of Naval Material for information. If a contract is to be awarded by an activity regulated by § 737.1-403-52(a)(1)(i)(K), information to include special clauses specified in § 737.1-403-52(a)(i)(K), information and business clearances specified in this subparagraph (4) shall be reviewed by the Head of Contracts, or in his absence, his principal deputy, of the SYSCOM or other procuring activity.

(5) The Chief of Naval Material (MAT 02) will, from time to time, review procuring activity procedures and records as appropriate to assure full compliance with paragraphs (a)(1) through (4) of this section.

(b) *Procurement actions requiring business clearance by the chief of naval material*—(1) *Clearance dollar thresholds.* Except when different clearance dollar thresholds are specified in paragraphs (b)(2) or (3) of this section, business clearance shall be obtained from the Chief of Naval Material on all contract actions and circumstances set forth in this § 737.1-403-51(b) when such actions will obligate amounts above the following:

(i) For the Naval Air Systems Command, the Naval Sea Systems Command and the Military Sealift Command: $10,000,000.

(ii) For the Naval Electronic Systems Command: $5,000,000.

(iii) For the Automatic Data Processing Equipment Selection Office: $3,000,000.

(iv) For the Marine Corps, Aviation Supply Office, Ships Parts Control Center, the Office of Naval Research, the Naval Facilities Engineering Command, the Naval Training Equipment Center, the Naval Regional Procurement Office, Long Beach, and the Naval Regional Procurement Office, Philadelphia: $2,000,000.

(v) For all other Navy purchasing offices: $1,000,000.

(2) *Types of Contract Actions. Negotiated Procurements.* Business clearance for negotiated procurements and other types of action shall be obtained from the Chief of Naval Material for the following:

(i) *New Procurements.* Business clearance, including type of contract clearance for multiple incentive (FPI, CPIF, and CPAF) contracts, is required for each contract or amendment effecting new procurement which by itself, or by the exercise of any option or options contained therein, would obligate the Government in a sum equal to or exceeding the specified clearance dollar value. Business clearance, including type of contract clearance for multiple incentive (FPI, CPIF and CPAF) contracts, is required for any contract amendment which, although effecting new procurement in a sum less than the specified clearance value, causes the aggregate obligation under the contract to equal or exceed the specified clearance dollar value. In all cases requiring clearance by reason of the amount of the aggregate obligation, full information shall be furnished explaining the existing portion of the contract being amended or the prior contract providing for the services being continued. Once a business clearance, including type of contract clearance for multiple incentive (FPI, CPIF and CPAF) contracts, has been obtained because of the aggregate obligation rule in the case of a contract amendment, a further such business clearance is required only when a subsequent amendment, in itself, is in an amount which equals or exceeds the clearance value specified in § 737.1-403-51(b)(1).

(ii) *Letter Contracts, Advance Procurement Contracts, and Long Leadtime Amendments.* Business clearance must be obtained from the Chief of Naval Material (MAT 02) for award of letter contracts, advance procurement contracts and long leadtime amendments, and from the Chief of Naval Material for other actions concerning these contracts and amendments as follows:

(A) *Contract Action or Circumstance.* Except as provided in paragraph (b)(2)(ii)(B) of this section, a business clearance must be obtained for:

(*1*) The award of a letter contract, advance procurement contract and long leadtime amendment when the total estimated amount exceeds the dollar threshold set forth in § 737.1-403-51(b)(1). Award of letter contracts, advance procurement contracts and long leadtime amendments that do not require Chief of Naval Material (MAT 02) business clearance, must be approved by the Head of Contracts, or in his absence, by his principal deputy. Further, such letter contracts, advance procurement contracts and long leadtime amendments proposed by activities controlled by § 737.1-403-51(b)(1)(v) must be approved by the Deputy Commander for Procurement Management, Naval Supply Systems Command prior to issue. *This authority may not be redelegated.* Further, the Head of Contracts shall sign a memorandum for the record regarding the salient aspects of the letter contract, advance procurement contract or long leadtime amendment, and setting forth a firm schedule for definition and conversion. This memorandum shall be submitted to the Chief of Naval Material no later than five (5) days after award of a letter contract, advance procurement contract, or long leadtime amendment, except that, this memorandum shall not be required if the procurement has previously been approved on a Request for Authority to Negotiate (RAN).

(*2*) The extension of the time period required for definitization of the letter contract, advance procurement contract and long leadtime amendment, or any increase in the maximum Government liability regardless of the authority for the award, including paragraph (b)(2)(ii)(B) of this section.

(*3*) Any increase in scope beyond the work scope initially specified in the letter contract, advance procurement contract and long leadtime amendment, except for contract changes, unless such changes themselves require business clearance pursuant to § 737.1-403-51(b)(2)(iii); and

(*4*) Conversion of the letter contract, advance procurement contract and long leadtime amendment to a definitive contract whose dollar value equals or exceeds the clearance dollar value for the particular procuring activity as set forth in § 737.1-403-51(b) of this section. If the letter contract, advance procurement contract or long leadtime amendment is definitized at a dollar value less than the clearance dollar value for the particular procuring activity, written notification of such definitization to the Chief of Naval Material (MAT 022) is required.

(B) *Exception.* When it is determined that a letter contract is the proper contractual instrument for a procurement designated "QRC" (Quick Reaction Capability) or "RDC" (Rapid Development Capability), as such procurements are defined in applicable SECNAV directives, such letter contract does not require the approval of the Chief of Naval Material (MAT 022).

(C) *Clearance Documents.* Letter contract, advance procurement contract, or long leadtime amendment business clearance approval may be obtained on any of the following documents:

(*1*) RAN (Request for Authority to Negotiate, Form NAVEXOS 2750) or

(*2*) RAC (Request for Authority to Contract, Form NAVEXOS 2760).

(D) *Definitization Time Limitations and Maximum Government Liability Under the Letter Contract.* § 3.408(c)(3) and (4) govern, respectively. Justification for the definitization schedule and maximum Government liability to be included in the letter contract shall be detailed in the business clearance.

(E) *Exceptions to ASPR Definitization Time Limitations or Maximum Liability.* Authorization by the Chief of Naval Material to issue a letter contract shall constitute approval to any requested exceptions to the limitations on the time for definitization or maximum Government liability prescribed by § 3.498(c)(3) and (4), respectively.

(iii) *Amendments and Changes.* Except for contract amendments incorporating the settlement of contractor "claims" (see § 737.1-401-55), business clearance is required for all

amendments pursuant to contract clauses such as those entitled "Changes," or "Government Property," or other contract provisions, which would effect an equitable adjustment of a contract, either as to price, estimated cost, or fixed fee, as the case may be, *provided* the proposed adjustment amounts to or exceeds the specified clearance dollar value, regardless of whether the original contract required business clearance.

(iv) *Unpriced Items.* Business clearance is required for any amendment which would obligate the Government to pay a definitive price of the specified clearance dollar value or more for a previously unpriced item or items of a contract or for any item or items previously priced only at a maximum price or percentage allocation basis.

(v) *Options.* Business clearance is required for each exercise or pricing of an option or options which would obligate the Government to pay the specified clearance dollar value or more notwithstanding the fact that business clearance had been previously obtained for the contract containing such option or options. A pre-negotiation business clearance proposing to definitively price an option prior to the expiration date shall be submitted at least 30 days prior to the expiration date of the option.

(vi) *Billing Prices.* Chief of Naval Material business clearance is not required for billing price amendments. In lieu of NAVMAT business clearance, billing price amendments are to be reviewed and approved prior to execution by the Head of Contracts of the SYSCOMS and other procuring activity. Interim billing price amendments for provisioned item orders under a contract for such items as spare parts, special support equipment, etc., exclusive of those issued by Inventory Control Points and other stock points for supply purposes, shall not exceed 50 percent of the contractor's proposed price for those orders. Business clearance shall be required when it is proposed to provide an interim billing price in excess of 50 percent of the proposed price for such provisioned items and for any subsequent increase thereof.

(vii) *Basic Ordering Agreements and Indefinite Delivery Contracts.* Business clearance is required for the basic contract instrument prior to placement of individual orders to justify the type of contract, including a description of the type of material or service to be covered, the ordering period, the approximate total dollar value estimated to be placed under the contract, the timing and procedure for pricing individual orders and the major contract provisions. (However, only one business clearance submission combining the pre- and post-negotiation requirements is necessary). Approval of such business clearance is limited to the features of the proposed basic ordering agreement, or Indefinite Delivery Type contract. Individual orders placed thereunder are individually subject to the requirements of § 737.1-403, though justification for the basic contract previously approved by the Chief of Naval Material need not be repeated.

(viii) *Cost-Plus-Award-Fee Contracts.* The clearance dollar value on business clearance covering cost-plus-award-fee contracts is established as follows:

(A) For the Naval Air Systems Command, Naval Electronic Systems Command, Naval Sea Systems Command: $2,000,000.

(B) For all other Navy procuring activities and the Marine Corps: $1,000,000.

(C) If the dollar value of the proposed contract is greater than those in paragraphs (b)(2)(viii) (A) and (B) of this section, but less than the specified clearance value set forth in § 737.1-403-51(b) of this section, the clearance need contain only:

(*1*) Propriety of and basis for selection of cost-plus-award-fee-type of contract (*2*) details of evaluation criteria and procedures to be included in the proposed contract which will be used in determining the amount of award fee earned; and (*3*) statement as to the proposed base fee and maximum fee. In these cases, the clearance memorandum shall be labeled on its face as a "Type-of Contract Clearance" and shall be submitted prior to negotiation. Only a memorandum of accomplishment need be submitted if the ob-

jective of the pre-negotiation clearance are achieved.

(ix) *Redeterminations for FPI and CPIF Contracts.* Business clearance is required for every agreement or amendment redetermining or revising the price or fee of a contract pursuant to an incentive price or incentive fee revision clause or other price or fee redetermination clause, provided the redetermined or revised price is of a value at or in excess of the specified clearance dollar value, notwithstanding the fact that the final price or incentive fee amount is proposed at no change in the existing price. The business clearance for the Final Redetermination of an FPI contract shall also state whether the contractor has met warranty and/or performance specifications in the contract and will state the status of any equitable price adjustment required. No amendment providing for an increase in contract price pursuant to a final redetermination of contract price will be processed without effecting an equitable downward price adjustment when it is determined that the contractor has failed to meet contract guarantees and/or contract performance specifications. However, the Contracting Officer may effect such an amendment if an amount is withheld that is in the best interest of the Government, pending the settlement of the equitable downward price adjustment. When cost incentive provisions are the only incentive in a CPIF contract for which business clearance had previously been required, only an informational business clearance memorandum shall be submitted to the Chief of Naval Material.

(x) *Redetermination After Completion.* Business clearance is required for a new contract or amendment, regardless of dollar amount, providing for retroactive price redetermination after completion. (See § 3.404-6(c) for limitation on use of this type of contract).

(xi) *Price Adjustment Under Warranty Clauses.* Business clearance is required for any price adjustment, regardless of dollar amount, negotiated pursuant to a guaranty clause, warranty provision, or arising from failure to meet contract specifications, *provided* the related contract itself is of a dollar amount which required business clearance in accordance with this § 737.1-403-51. The price adjustment may be submitted in a separate business clearance memorandum from other price adjustments under the contract.

(xii) *Split Awards.* Business clearance is required where split awards are made to two or more sources, provided the aggregate total amount of all awards equals or exceeds the specified clearance dollar value.

(xiii) *New Industrial Facilities.* Post-negotiation business clearance only is required for each new industrial facilities contract or amendment obligating the Government to an amount over $200,000 and less than $500,000. This business clearance requirement is waived if there has been express coordination and concurrence of the proposed actions by the cognizant contract branch or equivalent contract organization within the purchasing or procuring activity concerned, and if such coordination is indicated in the project request submitted in accordance with NAVMATINST 4860.13A (Industrial Facilities Program). Clearance dollar value shall be based on acquisition cost. Business clearance within the procuring activity is required and information copies of such internal clearance shall be submitted to the Chief of Naval Material. On facilities contract actions over $500,000, a request for business clearance is required to be submitted separately or as a part of the project request submitted in accordance with NAVMATINST 4860.13A (Industrial Facilities Program).

(xiv) *Speqial Contract Cost Reporting Requirements.* Business clearance is required for use of PIR (Procurement Information Reporting), NAVMAT Form 4260/1 (Contract Functional Cost-Hour Report) and DD Form 1177 (Cost Incurred on Contract) and for any deviation in reporting permitted of the general instructions for preparation of the form regardless of the dollar value of the procurement. A description of the program and the circumstances making the use of this report desirable shall be made in the contract (A) to require the contractor to prepare and submit the report and (B) for any deviations

or omissions from required reporting authorized by the business clearance.

(xv) *Special Requirements.* In individual cases, the Chief of Naval Material (MAT 02) may specifically require other procurements regardless of dollar value to be submitted for business clearance.

(xvi) *Multiple Incentive Type Contracts.* In addition to any other business clearance requirements hereof, the business clearance, both informational or formal, for all incentive contracts equal to or exceeding the dollar amounts specified in § 737.1-403-51(b)(2)(viii) of this section, which contain performance or delivery incentives, shall include therewith an original and two copies of an attachment which sets forth a summary of the incentive features of the contract (see § 737.1-403-52(a)(1)(iii)).

(xvii) *Nonpersonal services contracts.* See § 737.22-102.

(c) *Advertised Procurements (Including Small Business Restricted Advertising).* Business clearance for formally advertised procurements, including two-step formal advertising, shall be obtained from the Chief of Naval Material for the following:

(1) *Sole Bidders.* For each award to a sole bidder if the award by itself, or by the exercise of any option contained in the resulting contract, would obligate the Government in an amount equal to or exceeding the clearance thresholds set forth in § 737.1-403-51(b)(1).

(2) *Options.* Whether or not business clearance may have been obtained for a contract award containing an option or options, business clearances is required for each exercise of an option or options which would obligate the Government to an additional amount equal to or exceeding the dollar values set forth in § 737.1-403-51(b)(1).

(3) *Price Revision Clause.* For any amendment of a contract after award inserting a clause providing for price redetermination, price escalation, or any other type of price revision; and any agreement or amendment effecting redetermination of the price of a contract pursuant to a redetermination clause contained therein if the contract previously obligated the Government to pay $1,000,000 or more and notwithstanding the fact that the redetermination is proposed at no change in the existing contract price.

(4) *Amendments Pursuant to Contract Provisions.* Except for contract amendments incorporating the settlement of contractor "claims" (see § 737.1-401-55), business clearance is required for any amendment, pursuant to contract clauses such as those entitled "Changes," or "Government Property," or other contract provisions, which would effect an equitable adjustment of the price of a contract, *provided* price adjustment amounts to or exceeds the dollar values set forth in § 737.1-403-51(b)(1).

(5) *New Procurement.* For any amendment effecting new procurement which by itself, or by the exercise of any option or options contained therein, would obligate the Government to an amount equal to or exceeding the dollar values set forth in § 737.1-403-51(b)(1). An amendment effecting new procurement in an amount less than that specified in § 737.1-403-51(b)(1), but causes the aggregate obligation under the contract to equal or exceed the dollar values set forth in § 737.1-403-51(b)(1) will require business clearance; and in this connection, full information explaining the existing portion of the contract will be furnished. Subsequent amendments, in amounts less than those specified in this subparagraph b. do not require authority to contract.

(6) *Price Adjustment Under Warranty Clause.* For any amendment which would effect a price reduction, regardless of dollar amount, which is negotiated pursuant to a guaranty clause, warranty provision, or failure to meet contract specifications, *provided,* the related contract itself is of a dollar amount of $1,000,000 or more. The price adjustment shall be submitted in the form of a separate business clearance whether such price negotiations are a part of, or separate from, other price adjustments under the contract.

(d) *Special Circumstances for Certain Naval Activities.* (1) *Naval Air, Electronic, and Sea Systems Command.* In addition to the clearance required in § 737.1-403-51(b)(1) and (2) above, for NAVAIRSYSCOM, NAVELECSYSCOM, and NAVSEASYSCOM, the clearance value of

$10,000,000 ($5,000,000 for NAVELEC SYSCOM) is subject to the following conditions:

(i) The Head of Contracts, or in his absence, his principal deputy shall approve contract actions between $1,000,000 and $10,000,000 ($5,000,000 for NAVELECSYSCOM) in the following circumstances;

(A) Departure from a procurement plan set forth in connection with an authority to negotiate previously granted by the Chief of Naval Material, specifically with respect to the degree of competition involved, or the use of an advanced contract type. This approval action does not preclude the need to fulfill RAN and APP procedures set forth in § 737.3-306 and § 737.1-2100, respectively.

(B) Award to other than the low offeror, in whole or in part, including split awards when award is made to other than the consecutive low offerors.

(C) Employment of an incentive contract based on factors other than cost, such as performance and/or delivery. Clearance review in such cases applies to the propriety of the proposed incentive features, with reference to other aspects of this procurement. The business clearance shall include the complete rationale to support the use of such incentives and how the Government will benefit from the incentives applied. All business clearances containing performance incentives shall be accompanied by a written endorsement thereof by the Project Manager.

(ii) Post-negotiation business clearance review before award will be required in all cases by a supervisory echelon higher than the Branch level in the Contracts Division (see § 737.1-403-51(b)).

(iii) Business clearance memoranda *may* be formulated to the Chief of Naval Material for review and approval on contracts between $1,000,000 and $10,000,000 ($5,000,000 for NAVELEC SYSCOM) (although not otherwise required by this NPD) when, in the opinion of the Systems Command, controversial, sensitive or other issues on proposed contracts warrant such action.

(2) *Contract Administration Office Contractual Actions.* (i) The Chief of Naval Material business clearance dollar value on both pre-negotiation and post-negotiation business clearance covering contractual actions negotiated and to be executed by the Contract Administrator is required only when the dollar amount to be obligated exceeds the Systems Command or procuring activity (whose contract is to be amended) Chief of Naval Material clearance dollar value threshold. However, a post-negotiation business clearance shall be approved by the SYSCOM or other procuring activity whose contract is being amended for actions between $1,000,000 and regular clearance dollar threshold. The clearance dollar value also applies to orders under basic ordering instruments. When orders under such instruments are subject to annual pricing or pricing at a stated time or point of production (such as 40 percent of deliveries) and are not individually priced at time of such annual or periodic pricing and not at the time of order issuance.

(ii) The Contract Administrator shall submit requests for business clearances via the procuring activities initiating the procurement action when the proposed contract exceeds the Systems Command or procuring activity specified Chief of Naval Material clearance dollar value, or such lower dollar limitations as may be established by the Systems Command or procuring activity.

(iii) The Chief Naval Material business clearance dollar value on post-negotiation business clearance may be increased to $5,000,000 when circumstances warrant. Requests to increase this value shall be submitted to the Chief of Naval Material (MAT 02) and shall include specific reasons and time period for which the increase is required.

(3) *Utility Contracts.* Prior to executing any contract for electric power, gas (natural or manufactured), water, or other utility service, and irrespective of the amount thereof, business clearance shall be obtained from the Naval Facilities Engineering Command in accordance with requirements of § 737.5-2003-1.

(e) *Other Clearance Procedures.* (1) The approval of a business clearance does not in itself constitute approval

to deviate from the provisions of ASPR and NPD. Except as provided in § 737.1-109-51, deviations must be identified and approval to deviate must be specifically obtained from the Chief of Naval Material (MAT 02) in accordance with § 737.1-109.

(2) Copies of approved business clearance memoranda or any portions thereof, including any related Chief of Naval Material conditions of approval and the information required by § 3.811, shall be furnished to the cognizant Defense Contract Audit Agency officer and the ACO in accordance with 3.811.

(3) In addition to the foregoing requirements for Chief of Naval Material business clearance, procuring activities shall advise the Chief of Naval Material of any proposed procurement action which will be precedent setting, controversial or sensitive. Upon notification of such a proposed procurement action, the Chief of Naval Material may require submission of a Request for Authority to Contract.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55512, Dec. 21, 1976]

§ 737.1-403-52 Content of business clearance memoranda.

(a) A business clearance memorandum shall be prepared and submitted to the Chief of Naval Material (MAT 032) in duplicate (original plus 1 copy) on the forms, "Requests for Authority to Contract" (NAVEXOS 2760) or "Request for Authority to Accept Redetermined Price" (NAVEXOS 2762) as applicable. This paragraph describes in broad terms the type of information which should be submitted in the "Justification" portion of the NAVEXOS forms 2760 and 2762. In general, the purpose of the justification is to establish that the proposed procurement conforms both to Navy procurement policies and to good business practice. The Business Clearance Memorandum shall fully explain the costing and pricing aspects of the proposed procurement and provide detailed information with respect to any unusual features in the proposed procurement. It should briefly outline the dates of the proposed contractor's quotation and subsequent negotiations and steps taken by the negotiator to secure adjustment or explanation of any questionable features of the proposed contract pricing, together with the results obtained.

(1) *For approval of a proposed definitive contract or amendment.* (i) Each prenegotiation Business Clearance Memorandum shall contain, or be accompanied by, the following information, to the extent possible before negotiation:

(A) A description of the supplies or services, showing the number of units, the unit price, and the extension of total contract amount being procured (when the Business Clearance Memorandum covers a contract amendment, the amount of the original contract and all amendments made previously to the instant clearance should be set forth in the space provided on the cover page under caption "Contract Amount(s)");

(B) A citation, on the cover page, of the particular paragraph of 10 U.S.C. 2304 permitting the negotiations, including any Class Determination and Finding (CDF) number previously assigned to an approved CDF applicable to the instant Business Clearance Memorandum, and an indication of the date of the approval of either the required Determination and Finding (D&F) or the statement of the contracting officer authorizing the negotiation (if there is knowledge or previous procurements for the same or similar items effected by means of formal advertising or informal competition, state the justification for the presented in an applicable Negotiation Clearance Memorandum);

(C) The extent to which competition was solicited and secured (if no competition was solicited, a statement as to the reasons therefor);

(D) Data on the proposed contractor's financial stability if the proposed contractor is one with whom the procuring activity has had no previous contracting experience. (It is of prime importance that the proposed contractor's current balance sheet, profit and loss statement, and other financial statements, such as a cash flow sheet, be secured and carefully reviewed by the procuring activity if little is known of his financial position. A summation of this financial analysis establishing

the proposed contractor's financial stability shall be included in the Business Clearance Memorandum. As suggested in § 737.31-202, where there is doubt that a prospective contractor has the financial capacity or credit resources considered essential to the performance of a contemplated contract, especially when the contemplated contract would clearly overextend the working capital position of the prospective contractor, the contracting officer should refer the case to the Chief of Naval Material (MAT0243), and, in appropriate cases, the contracting officer and the Chief of Naval Material (MAT0243), after determining that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should prior to or concurrent with the submission of any required Business Clearance Memorandum, consult with the Comptroller of the Navy to determine whether financing can prudently be arranged. (The Business Clearance Memorandum should explain in the "Justification" the presence of any such financial aspects of the proposed contract);

(E) When applicable, a statement that approval of advance payments has been secured in accordance with the requirements of § 30.5. (The cover page of the Business Clearance Memorandum carries check blocks to indicate any proposed advance payments, and an amplifying statement thereof shall be included in the "Justification" in the body of the clearance memorandum as well as a statement as to the presence in the proposed contract of any requirement for a guaranteed loan, as discussed in § 737.31-202 or a direct loan under Section 302 of the Defense Production Act of 1950);

(F) [Reserved]

(G) A complete cost estimate ("Cost Breakdown"), together with the negotiator's analysis of the estimated cost. The negotiator's analysis should contain a comparison of cost factors proposed in the instant case with (*1*) actual or estimated cost factors used in earlier contracts, using the same cost centers of the same supplier or cost centers of other sources having recent contracts for the same or similar item, (*2*) any known recent operating statements of the proposed contractors, and (*3*) any pertinent Government-conducted audits of the proposed contractor's records. The negotiator's analysis should further indicate whether the labor rates used in estimating costs are (*4*) current or projected rates, (*5*) average rates for the company as a whole, or for a particular division or for the particular departments which will perform the instant work, or (*6*) specific individual rates of the personnel who will perform the work. The proposed contractor's cost data shall be furnished on the cost breakdown form "Contract Pricing Proposal" (DD Form 633), or other form permitted by § 16.206. In the case of a redetermined price or a final price in the case of an incentive type contract, furnish cost breakdown (DD Form 784) with the negotiator's analysis, or alternate form as provided in § 16.207. One copy of the proposed contractor's current and properly executed cost breakdown, together with all required supporting data, shall accompany the Business Clearance Memorandum for retention by the Chief of Naval Material (MAT 022);

(H) If the proposed contract is of the cost-type, with or without a fixed fee, an explanation as to whether the various burden rates used in estimating costs are (*1*) to be provisionally used for reimbursement proposed pending the determination of fixed burden rates, or (*2*) rates previously negotiated for a past period, and state the period, or (*3*) for estimating purposes only, with reimbursement to be on a true cost basis determined after full government audit (If paragraphs (a)(1)(i)(H) (*1*) or (*2*) of this section are present, an explanation should be set forth of the basis used in establishing the burden rates. The negotiator's analysis should further indicate whether the labor rates used in estimating costs are (*4*) current or projected rates, (*5*) average rates for the company as a whole, or for a particular division, or for the particular departments which will perform the instant work, or (*6*) specific individual rates of the personnel who will perform the work);

(I) A justification of the reasonableness of the proposed contractor's esti-

mated profit or fixed fee, considering such factors as any competitive elements, established proficiency of performance, extent of the risk assumed by the proposed contractor, and nature and extent of contribution to the defense effort, character of the proposed contractor's normal business, the extent of subcontracting in the instant case and the reasons therefor, capital employed, and such other factors as are appropriate;

(J) A price comparison with previous purchases for the same or similar supplies or services, with an explanation of variances in quantities, production rates, and, when known, cost factors;

(K) An original and one copy of each special clause affecting price proposed for use but not authorized for general use, together with a full explanation of its purpose and a statement of its approval by Counsel for the procuring activity (or where field purchasing activities under the cognizance of the Naval Supply Systems Command have no Counsel, a statement of approval by Counsel for that Systems Command);

(L) With respect to Government-furnished material or Government-provided facilities, equipment, tooling or other property, including any public or civil works-type facilities:

(*1*) Where such property is to be provided, (*i*) a full description thereof, (*ii*) the estimated dollar value thereof, (*iii*) the basis of evaluation for price comparison with competitors, and (*iv*) the basis of rental change, if rental is involved;

(*2*) Where no such property is to be provided, a statement to that effect; and

(*3*) Where the providing of any property or the extent thereof has not been determined and is left open for future resolution, a detailed explanation;

(M) When applicable, a statement of such approval as may be required by any reviewing authority heretofore or hereafter established. (If a request for any such approval has been made but approval has not been received, state the date and to whom such request was made; if no request for approval has as yet been made, set forth the anticipated date and recipient of such request);

(N) When the proposed contract is to contain a price redetermination clause other than an incentive type, a copy of any special redetermination clause or a reference to the standard clause proposed for use together with a statement of the "target point" and the date on which the "target point" is estimated to occur and also a statement as to compliance with § 737.1-403-52(a)(1)(i)(G). (The "target point" for redetermination may be set at a point when either an approximate percentage of deliveries has been made or an approximate percentage of manufacturing costs has been incurred, normally at no earlier than 40 percent and no later than 50 percent of manufacturing costs incurred under the proposed contract. Consideration should be given to the proposed contractor's accounting periods when the "target point" is set.)

(O) When an incentive type contract is proposed, a reference to the standard, or a copy of any special, clause proposed for use together with a table showing the proposed incentive pattern;

(P) When applicable, a copy of any required approval or statement (as differentiated from a D&P or CDF) justifying the negotiation of a contract or an amendment under the authority of 10 U.S.C. 2304;

(Q) A statement of the extent to which Federal excise taxes have been deleted from the proposed contractor's quoted price by use of tax exemption certificates;

(R) A statement as to the consideration given to broadening of the industrial base by the establishment of sources additional to those previously utilized for the proposed supplies or services;

(S) When applicable, a statement of the date of any exemption to the Buy American Act granted by the Secretary, or if the request for such exemption has not been submitted, state the anticipated date of such submission in accordance with § 737.6-104-4(a);

(T) On all proposed contracts, as defined in § 1.201-4, with a dollar amount of $5,000,000 or more a statement as to (*1*) the extent of subcon-

tracting of complete units or major components estimated for the instant contract; (*2*) the total dollar amount of uncompleted contracts now held by the particular plant or division of the proposed contractor, and also set forth the segregated dollar amount of governmental contracts included in such total; and (*3*) an estimate of the months of production represented by the uncompleted contracts set forth under paragraph (a)(1)(i)(T)(*2*) of this section;

(U) In connection with any contract for experimental, developmental, or research work, a statement as to (*1*) the necessity for Government-furnished facilities, if any are included, (*2*) the nature and extent of any related production work that will be carried on by the contractor, and (*3*) the nature and extent to which production contracts may be awarded as a result of such experimental, developmental, or research work and the extent to which such production contracts may be awarded to the contractor who is to perform the experimental, developmental, or research work;

(V) Any supplemental cost data obtained from the contractor prior to negotiations;

(W) When use of a progress payments clause is contemplated, a specific statement will be included in the clearance memoranda indicating compliance with § 30.5 pertaining to the conditions to be met precedent to inclusion of a progress payments clause or justification for any departure therefrom.

(X) Identification by area of responsibility of the members of the negotiating team who participated in the cost and technical evaluations and those who are expected to participate in negotiations. (This will include any personnel not directly assigned to the procuring activity, such as representatives of the field contract administrators);

(Y) The approximate date of beginning negotiations.

(Z) When other than a fixed-price type of contract is to be used, a reference to the Contract Audit Division's advice on the proposed contractor's accounting system and action thereon (see § 737.3-803).

(AA) A numbering of the clearance memorandum in the manner prescribed in § 737.1-403-53.

(BB) A copy of the contractor's proposed make-or-buy plan if required by § 3.902-2(b).

(CC) A statement as to whether the contractor has an approved procurement system and if so, the date such system was last reviewed.

(DD) For all letter contract or long lead time amendment conversions, the cover page of the clearance (if a clearance is required) shall clearly state that it is a letter contract or long lead time amendment conversion to a ————type contract. The outset of the clearance shall state the history of the letter contract or long lead time amendment (i.e., when it was entered into, the date of the contractor's proposal or proposals, date of DCAA/CAS reports, the percent of costs incurred, the percent of physical completion of the contract, and if applicable, the reasons for delay in conversion).

(EE) A citation to the approved Advanced Procurement Plan and a statement that the business clearance is in conformity with the APP. If an APP has not been prepared and approved or if any departure from the approved APP is being made in this business clearance, a complete explanation of the reasons therefor shall be provided.

(FF) When required by SECNAV INST 5000.1 of 13 March 1972, the certification prescribed by paragraph G2c of enclosure (3) thereof.

(ii) Each post-negotiation Business Clearance Memorandum shall contain, or be accompanied by, the following information:

(A) The results of negotiation, including any material changes from the approved pre-negotiation clearance, in sufficient detail so that both clearance papers reflect an adequate record of the negotiation. Information already furnished in the pre-negotiation Business Clearance Memorandum need not be repeated if no material change resulted from the negotiations.

(B) The actual date of negotiation and identification of the participating personnel.

(C) When the contracting officer has required a Certificate of Current Cost or Pricing Data in accordance with

§ 3.807-3 (excluding requests made to Canadian Commercial Corporation):

(*1*) A properly executed copy of the Certificate of Current Cost and Pricing Data.

(*2*) Any supplemental cost data obtained, or a summary thereof, such as written documents or oral presentations of actual cost data (material prices, labor hours, labor rates, overhead rates, etc.).

(*3*) An evaluation of the supplemental data, its effect upon cost trends, and the degree to which it supports or justifies the prices negotiated with the contractor.

(D) In accordance with § 12.808-3, a statement regarding requests for preaward compliance check of nonexempt contracts.

(iii) All business clearances above or below the applicable clearance threshold, which contain multiple incentives, shall contain the complete rationale supporting the usage of the cost, performances and/or delivery incentives and explain how the contractor is to be motivated by the incentives, why the incentive on performance is necessary, and how the Government will benefit from the incentives. All business clearances containing performance incentives shall be accompanied by a written endorsement thereof by the Project Manager.

(2) For approval of a *proposed definitive award* to be made *after advertising* each Business Clearance Memorandum submitted shall contain, or be accompanied by, the following information:

(i) A description of the supplies or services being procured, showing the number of units, the unit price, the total contract price, and when voluntarily submitted by the proposed contractor, the objective or anticipated profit;

(ii) Where three or less bids are received, indicate the number of bids requested and list the bidders together with their respective bids; if more than three bids are received, indicate the number of bids requested, the number received, and the price range of the bids received;

(iii) Where only one responsive and responsible bid is received and where there is no adequate price comparison or price justification, it is normally desirable to complete the procurement by negotiation regarding the Business Clearance Memorandum; in certain cases, it may be appropriate to complete the procurement and make the award by formal advertising and in such cases, an explanation of the absence of negotiation with the sole bidder should be given;

(iv) A comparison of the price of the proposed procurement with prices previously paid for the same similar supplies or services, considering changes in labor and material costs, as well as differences in contracted quantities and production rates;

(v) An original and two copies of each special clause affecting price proposed for use but not authorized for general use, together with a full explanation of its purpose and a statement of its approval by Counsel for the procuring activity (or where field purchasing activities under the cognizance of the Naval Supply Systems Command have no Counsel, a statement of approval by Counsel for that Systems Command;

(vi) And a numbering of the clearance memorandum as prescribed in (e).

(3) [Reserved]

(4) For *authority to accept a redetermined price, or a final price in the case of an incentive-type contract.* (i) Each pre-negotiation Business Clearance Memorandum shall contain, or be accompanied by, the following information, to the extent possible before negotiation:

(A) A statement of any changes which have been made in quantities or delivery rates during the contract period to date;

(B) A statement:

(*1*) Whether or not the contractor submitted his redetermination proposal reasonably promptly after reaching the contract's target date, and

(*2*) If delinquent, how long the contractor was delinquent in relation to the actual performance period of the contract, *and whether the delinquency* was the contractor's the Navy's responsibility (the profit negotiated at the redetermination point should reflect any lessening of the contractor's risk due to unreasonable delinquency

in submitting his redetermination proposal);

(C) A comparison of the actual and projected costs with the original estimated costs, including a comparison of the actual and estimated cost factors with any relevant Government audits. (Whenever possible, actual production costs incurred at or near the point of attainment of the contract's peak production rate should be segregated from the total actual cost incurred to target point. Such segregation should then be used in evaluating costs projected from the target point to completion);

(D) A comparison of the delivery rates actually accomplished in the completed portion of the contract with the delivery rates projected for the uncompleted or run-out portion of the contract;

(E) When applicable, a statement in a Business Clearance Memorandum to the effect that redetermination of the contract price will not be required because partial termination prevents attaining the previously agreed target point and the target point has not been advanced under the terms of the redetermination clause. (In these instances, no cost data will be required by the Chief of Naval Material (MAT022), but the above required statement will complete the file);

(F) A statement as to whether or not the Government has audited the claimed actual costs and reviewed the projected costs and, if so, what such audit and/or comments disclosed;

(G) A statement as to any pending renegotiation proceedings encompassing the instant contract (Directives will be issued in the future regarding the handling of redeterminations which involve renegotiation);

(H) All cost data on the appropriate cost breakdown form "Cost and Price Analysis" (DD Form 633), "Cost and Price Analysis for Contract Price Redetermination" (DD Form 784), or other form permitted or required by § 16.206, § 16.207, and § 737.1-403-52(a)(1)(i)(G) (At least one copy of the contractor's breakdown on such form shall accompany the Business Clearance Memorandum for retention by the Chief of Naval Material (MAT022));

(I) The information called for by paragraph (a)(1)(i) (V), (W), and (X) of this section; and

(J) A numbering of the Business Clearance Memorandum in the manner prescribed in § 737.1-403-53(a).

(ii) For the content of the post negotiation Business Clearance Memorandum, see paragraph (1)(ii) of this section.

§ 737.1-403-53 Business clearance memoranda numbering instructions.

(a) *Numbering.* (1) Requests for Authority to Negotiate, Business Clearance Memoranda, and Reports After Execution of Contract submitted to the Chief of Naval Material (MAT022) shall be numbered with serial numbers and symbols as set forth in (b) below. Any purchasing office, prior to the submission of its first clearance memorandum, should contact the Chief of Naval Material (MAT022) for the assignment of a symbol number, if one has not previously been assigned.

(2) When both Business Clearance Memoranda and Requests for Authority to Negotiate are required on a single contract, the Request for Authority to Negotiate shall bear the earlier number and the Business Clearance Memorandum shall bear the same basic number with the addition of a decimal digit. (For example, on a new contract proposed to be negotiated by NAVAIR, the Request for Authority to Negotiate would be numbered "NAVAIR-10327" and the Business Clearance Memorandum covering the request for authority to execute the same contract would be numbered "NAVAIR-10327.1.") If subsequent actions on a contract require either an additional Request for Authority to Negotiate or an additional Business Clearance Memorandum, or both, any such additional clearance memoranda should bear the same prefix and basic number plus the next consecutive decimal digit. The Request for Authority to Negotiate for any particular contract action always bears a lower decimal digit than the Business Clearance Memorandum for the same action. (For example, after the NAVAIR contract above referred to was issued, the

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scope of the contract was changed so that an amendment was necessary in an amount requiring clearance, then the new Request for Authority to Negotiate would be numbered "NAVAIR-10327.2" and the Business Clearance Memorandum covering that amendment would be numbered "NAVAIR-10327.3").

(3) An exception to the rule set forth in paragraph (a)(2) of this section would be in a case of Business Clearance Memoranda proposing a contract amendment negotiated under the authority of a CDF. Such Business Clearance Memoranda should be assigned new basic numbers and should not refer to the Request for Authority to Negotiate which submitted the CDF but should refer only to the CDF number assigned by the Chief of Naval Material (MAT 022) in accordance with § 737.3-306-53(g). (For example, if the Naval Air Systems Command *submitted* a CDF for Project X under Request for Authority to Negotiate "NAVAIR-10210" and this request for negotiation authority was granted, the Chief of Naval Material (MAT 022) would assign a CDF number (CDF-50) to the approved CDF. When the Naval Air Systems Command exercised this negotiation authority to let a contract requiring a Business Clearance Memorandum, the Business Clearance Memorandum would be numbered with the next unused consecutive number in the NAVAIR series which might be "NAVAIR-10285" and would cite CDF-50 as the negotiation authority). Any Business Clearance Memorandum covering a subsequent amendment to the same contract should be numbered "NAVAIR-10285," plus the appropriate decimal digit, and should always cite the appropriate CDF number.

(4) If a resubmission of any Business Clearance Memorandum or any Request for Authority to Negotiate covering either an individual or a CDF is required, or if a resubmission of only a D&F is required, such resubmission shall bear the same prefix and basic number plus the next appropriate unassigned decimal digit.

(5) Reports After Execution of contract (RAE's) shall be numbered by the originator consecutively beginning with "1" prefixed by the procuring activity symbol assigned in NPD paragraph (g) below. (For example, "ASO-120.") In instances where procuring activities have already begun their submissions of RAE's, numbering of submissions made subsequent to this directive will continue consecutively.

(b) *Symbols and Serial Numbers.* (1) Clearance memoranda symbols for either Requests for Authority to Negotiate or Business Clearance Memoranda are shown below.

Bureau or office	*Symbol*
Naval Air Systems Command Headquarters	NAVAIR
Naval Ordnance Systems Command Headquarters.	NAVORD
Naval Electronic Systems Command Headquarters.	NAVELEX
Bureau of Naval Personnel	BP
United States Marine Corps	MC
Military Sealift Command	MSC
Office of Naval Research	ONR
Naval Sea Systems Command Headquarters (Hulls), (Radio) and (Components).	SEA
Naval Facilities Engineering Command Headquarters.	NAVFAC
Naval Academy, Annapolis, MD	AC
Aviation Supply Office, Philadelphia, Pa	ASO
Naval Regional Procurement Office, Naples	NAP
Naval Regional Procurement Office, Philadelphia, Newport Division.	NPT
Naval Supply Center, Puget Sound, Bremerton.	NSC, BR
Naval Air Station, Patuxent River, MD	PAX
Naval Shipyard, Boston, Mass	B
Navy Resale System Office, Brooklyn, N.Y	BK
Puget Sound Naval Shipyard, Bremerton, Wash.	BR
Charleston Naval Shipyard, Charleston, S.C	C
Naval Shipyard, Charleston, S.C	C
Naval Air Station, Corpus Christi, Tex	CC
Naval Ammunition Depot, Crane, Ind	CR
Electronic Supply Office, Great Lakes, Ill	ESO
Naval Ordnance Plant, Forest Park, Ill	FP
Navy Fuel Supply Office, Washington, D.C	FUSO
Naval Ship Repair Facility, Guam, Mariana, Islands.	GU
Naval Propellant Plant, Indian Head, Md	IH
Naval Avionics Facility, Indianapolis, Ind	IND
Naval Air Station, Jacksonville, Fla	JAX
Naval Regional Procurement Office, Long Beach, CA.	LB
Naval Regional Procurement Office, Naples (CAB London).	LON
Naval Supply Depot, Newport, R.I	N
Naval Air Development Center, Johnsville, Pa.	NADC
Naval Air Engineering Center, Philadelphia, Pa.	NAF
Ships Parts Control Center, Mechanicsburg, Pa.	SPCC
Naval Supply Center, Norfolk, Va	NF
Naval Surface Weapons Center, White Oak Laboratory, White Oak, Silver Spring, MD.	WOL
Naval Ordnance Plant, Louisville, Ky	KY
Naval Shipyard, Philadelphia, Pa	NP
Naval Research Laboratory, Washington, D.C.	NRL

Bureau or office	Symbol
Naval Training Equipment Center, Orlando, Fla.	NTEC
Portsmouth Naval Shipyard, Portsmouth, N.H.	P
Naval Supply Center, Pearl Harbor	PH
Naval Supply Depot, Seattle, Wash	SE
Naval Supply Center, Oakland, Calif	OAK
Navy Oceanographic Office, Suitland, Md	NHO
Naval Regional Procurement Office, Washington, D.C.	WA
Naval Supply Depot, Yokosuka, Japan	YOK
Naval Surface Weapons Center, Dahlgren Laboratory, Dahlgren, VA.	DL

(2) The initial serial number to be used by all above-listed activities on Requests for Authority to Negotiate or Business Clearance Memoranda is 10,000. All subsequent requests or memoranda are to be numbered consecutively in the 10,000 series without regard to date of submission.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55512, Dec. 21, 1976]

§ 737.1-403-54 Utilization of headquarters Naval Material Command files.

All records and files of the Headquarters Naval Material Command (Procurement Control and Clearance Division (MAT022)). (Contract Appraisal Branch (MAT022)), are available at all times to properly qualified personnel of procuring activities who desire to secure additional data for use in their negotiations of specific contracts or amendments. Personnel desiring to utilize such records and files shall, however, first inform their Security Officer of their desire and request such Security Officer to inform the Chief of Naval Material (MAT022), by telephone, the highest security classification of the individual contemplating the use of the Contract Clearance records and files. The individual should identify himself by means of his Departmental identification pass when he visits the Chief of Naval Material (MAT022).

§ 737.1-403-55 Legal approval of contracts by the Office of the General Counsel.

See § 737.1-452-1.

§ 737.1-403-56 Tuition for civilian employee training.

Contracts which require the payment of tuition for civilian employees from appropriated funds shall include a proper reference to the action of the authority approving the tuition payment. Civilian Manpower Management Instruction (CMM) 410.6 includes procedures which will be followed when requesting this approval. The Contracting Officer is responsible for ascertaining, prior to execution, that each proposed contract requiring the Government to pay tuition for civilian employees is within the scope of such approval.

§ 737.1-403-57 Prior approval of contracts for management engineering organization and management-type surveys and studies.

See SECNAVINST 5040.1D.

§ 737.1-403-60 Reports after execution of small business partial set-asides.

In lieu of a business clearance, a report shall be made promptly to the Chief of Naval Material (MAT022) for each contract in excess of $300,000 which is awarded pursuant to the procedures referred to in § 1.706-2. This report shall be submitted on DD Form 350.

§ 737.1-403-61 Reports after execution of advertised contracts.

(a) Unless business clearance has been or will be secured under the requirements of this NPD 1-403, a full report shall be made promptly to the Chief of Naval Material (MAT022) for each contract awarded by means of *formal advertising* and Small Business Restricted Advertising, other than purchases of subsistence supplies or supplies purchased for authorized resale, obligating the Government to pay $600,000 or more. This report shall be submitted on DD Form 350 and, in addition to the specific information requested thereon, shall include in Item 23 (Remarks) thereof, or as a rider thereto, the following information:

(1) The number of invitations for bids issued and the number of bids received on each item, and a listing of the unit, quantity, and unit price of each item awarded;

(2) A statement as to whether the procurement was advertised on a unit or lot basis;

(3) Where three or fewer items were procured, a listing of such items, and

(i) The unit prices bid by each bidder if three or fewer bids were received, or

(ii) The unit price range of the unsuccessful bidders if more than three bids were received; and

(4) Where more than three items were procured, a priced copy of the Award or of the contractor's bid, and

(i) The total contract price bid by each bidder if three or fewer bids were received, or

(ii) The total contract price range of the unsuccessful bidders if more than three bids were received.

§ 737.1-405 Selection, appointment, and termination of appointment of contracting officers.

§ 737.1-405-50 General.

The Head of each Navy Procuring Activity is hereby designated a contracting officer (as defined in § 1.201-3) and subject to the provisions of § 1.405 is authorized to delegate all or any part of his contracting authority to such person or persons as he may select and designate as contracting officers.

§ 737.1-405-51 Contracting authority of Head, Coordinated Negotiation Staff (MAT02D), Headquarters, Naval Material Command.

(a) Where a contractor has or is expected to have cost reimbursement type contracts with more than one Navy procuring activity or Military Department, the Head, Coordinated Negotiation Staff of Headquarters Naval Material Command is authorized, as contracting officer for the Department of the Navy, to negotiate, enter into and amend Navy-wide agreements for—

(1) Reimbursement of allowable costs;

(2) Overhead rates; and

(3) Advance understandings on particular cost items as provided in § 15.107.

(b) Agreements entered into under authority of paragraph (a) of this section shall, unless otherwise provided therein, be binding on all Navy purchasing activities and may apply to any and all Navy cost reimbursement type contracts, except that agreements under paragraphs (a) (1) and (2) shall be restricted to contracts which provide for reimbursement of overhead costs on the basis of negotiated final overhead rates in accordance with ASPR or § 737.3-700.

§ 737.1-406 Contract administration functions.

§ 737.1-406-50 Responsibilities of the Naval Plant Representative Offices (NAVPROs) and Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPs).

(a) *Policy.* The following policy, applicable to Navy field contract administration of major defense system acquisitions, is based upon the premise that the contractor is primarily responsible for his cost, schedule, and technical performance;

(1) A capability shall be established and maintained in the NAVPROs and SUPSHIPs to provide the required support to the procuring contracting officer, program manager and procuring activity.

(2) Maximum responsibility, within existing capability, shall be assigned to the NAVPRO or SUPSHIP by the procuring contracting officer, program manager, and/or procuring activity. Appropriate agreements shall be formalized which clearly define for each program assigned to a NAVPRO or SUPSHIP the detailed responsibility of the NAVPRO or SUPSHIP (see § 737.20-702-4).

(3) The basic method of operation of the NAVPRO or SUPSHIP shall be the monitoring of the contractor's performance, including management and operations. Emphasis shall be placed on ensuring that contractors incorporate controls to ensure that the contract requirements are met.

(4) NAVPROs and SUPSHIPs shall coordinate their contract administration efforts with those of the DCAA (Defense Contract Audit Agency) auditor and other government activities. Functional area reviews conducted by the DCAA auditor and those conduct-

ed by the NAVPRO or SUPSHIP shall be coordinated in order to optimize use of audit and Government contract administration manpower with minimum disruptive effect upon the contractor.

(5) The goal of NAVPROs and SUPSHIPs shall be, through involvement with the contractor: Earliest detection and correction of contractor inefficiences; cost avoidance rather than disallowance; and compliance with contractual schedule and technical performance requirements.

(6) Contract administration personnel shall be fully observant of contract terms and conditions in order to avoid actions which exceed contract requirements and to assure that any directions, suggestions or requests to the contractor are consistent with the contract provisions.

(7) Contract administration procedures shall be tailored to the contract and contractor situations. The degree of monitoring exercised by the NAVPRO or SUPSHIP shall be consistent with the benefits to be derived. The art of the field contract administrator is his ability to determine and to use the minimum amount of effort required to protect the Government's interests.

(b) *Primary Responsibilities.* NAVPROs and SUPSHIPs have the primary responsibilities listed below which require the integrated performance of the functions listed in § 1.406(c), and the assistance of the DCAA auditor:

(1) Determine on a continuing basis contractor compliance with the terms of the contract including schedule, cost and technical performance requirements;

(i) Advise the contractor of the need for corrective action and followup to obtain correction;

(ii) Advise, as appropriate, the procuring contracting officer, project manager, procuring activity, and/or other responsible official or activity of any contractor deficiencies which the NAVPRO or SUPSHIP cannot resolve within the limits of his authority;

(iii) Consult with the procuring contracting officer in the event of conflict or disagreement;

(2) Advise, as appropriate, the procuring contracting officer, project manager, procuring activity, and/or other responsible official or activity of any problem not covered by contract terms affecting the adequacy of the end item or the contractor's cost, schedule or technical performance which the NAVPRO or SUPSHIP cannot resolve within the limits of his authority.

(3) Advise the procuring contracting officer of any inadequacies in contract terms, including schedule, cost and technical performance requirements, revealed during the performance of contract administration functions.

(4) Determine whether the contractor's direct and indirect costs are reasonable, allocable and otherwise allowable, that costs represent what performance of the contractor should cost, assuming reasonable economy and efficiency; take appropriate corrective action when necessary.

(c) *Additional Functions.* The functions listed below are in addition to those listed in § 1.406(c) and shall be performed when requested by the procuring contracting officer, project manager or procuring activity.

(1) Conduct pre-solicitation review and evaluation of the Schedule, General Provisions, Specifications and other provisions of proposed contracts to determine the adequacy of contractual requirements for contract administration purposes.

(2) Participate in negotiations and in source selections.

(3) Issue orders under contracts for provisioned and other items, and orders under basic ordering agreements.

(4) Participate in cost and other studies conducted by higher authority.

§ 737.1-406-51 Negotiating complex requests or claims for equitable adjustments pursuant to contract clauses.

Circumstances may arise where a contractor's assertions involve difficult or complex legal, factual, or fiscal issues requiring extensive fact-finding and analysis of government liability. Examples include late or defective government furnished property or information, complex delay and disrup-

tion issues under formal change orders, and formal suspensions of work or stop work orders. In such circumstances, the request or claim for equitable adjustment shall be subject to the requirements of § 737.1-401-55 applicable to claims.

[41 FR 55513, Dec. 21, 1976]

§ 737.1-406-52 Contractor employee compensation and insurance/pension reviews.

(a) NAVPROs (Naval Plant Representative Offices) and SUPSHIPs (Supervisors of Shipbuilding, Conversion and Repair) are responsible for determining the final allowability of contractor costs, including costs for contractor employee compensation, insurance, and pensions. As part of the effort necessary to make determinations applicable to employee compensation, insurance, and pensions costs, NAVPROs/SUPSHIPs may use the services of the cognizant DCASR (Defense Contract Administration Service Region) to conduct the reviews required by § 1-406 (c) (1) and (2) of this title.

(b) Reviews conducted by DCAS shall be conducted in accordance with DCAS regulations. NAVPRO/SUPSHIP personnel may serve on DCAS/DCAA review teams. Such reviews will not duplicate review areas covered by reviews made by NAVPROs/SUPSHIPs, or by the Navy Material Command Insurance Examiner, unless specifically requested.

(c) DCAS reports of compensation and insurance/pension reviews shall be distributed only to the NAVPRO or SUPSHIP, and the cognizant DCAA auditor, except for copies used by DCAS for internal use. Action on recommendations in reports is the prerogative of the NAVPRO or SUPSHIP served. A copy of each report shall be provided the cognizant systems command and the Chief of Naval Material by the NAVPRO or SUPSHIP.

(d) Requests for DCAS services should be confirmed in writing to Defense Contract Administration Services, DCAS-AF, Room 8A489, Cameron Station, Alexandria, VA 22314. A copy should be sent to the Chief of Naval Material (MAT 024), Washington, DC 20360 and higher headquarters of the NAVPRO/SUPSHIP.

(e) When the services of the DCASR are used, the Navy will pay for the cost of travel and per diem, and, subject to prior approval of the Navy, for costs of the services of an independent actuary.

[41 FR 55513, Dec. 21, 1976]

§ 737.1-407 Functions of Defense Contract Audit Agency (DCAA) offices.

DCAA audit offices are responsible for performing all necessary contract audit for the Department of Defense and providing accounting and financial advisory services regarding contracts and subcontracts to all Department of Defense components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. Audit offices perform the following functions:

(a) Audit, examine and/or review contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control; accounting, costing, and general business practices and procedures; to the extent and in whatever manner is considered necessary to permit proper performance of the other functions described in paragraphs (b) through (i) of this section.

(b) Examine reimbursement vouchers received directly from contractors, under cost-type contracts, transmitting those vouchers approved for payment to the cognizant Disbursing Officer and issuing DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," with a copy to the cognizant contracting officer, with respect to costs claimed but not considered allowable.

(c) Provide advice and recommendations to procurement and contract administration offices on:

(1) Allowability of costs incurred under redeterminable, incentive and similar type contracts;

(2) Allowability of incurred costs and estimates of cost to be incurred as represented by contractors incident to the award, negotiation, modification,

change, administration, termination, or settlement of contracts;

(3) Adequacy of financial or accounting aspects of contract provisions;

(4) Adequacy of contractors' accounting and financial management systems; adequacy of contractors' estimating procedures.

(d) Assist responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors.

(e) Direct audit reports to the Government management level having authority and responsibility to take action on the audit findings and recommendations.

(f) Cooperate with other appropriate Department of Defense components on reviews, audits, analyses, or inquiries involving contractor's financial position or financial and accounting policies, procedures, or practices.

(g) Establish and maintain liaison auditors as appropriate at major procuring and contract administration offices.

(h) Review General Accounting Office reports and proposed responses thereto which involve significant contract or contractor activities for the purpose of assuring the validity of appropriate pertinent facts contained therein.

(i) In an advisory capacity, attend and participate, as appropriate, in contract negotiation and other meetings where contract cost matters, audit reports, or related financial matters are under consideration.

(j) Defense Contract Audit Manual (DCAAM 7640.1), also referred to as "CAM" includes the policies, procedures, standards and techniques governing Defense Contract Audit Agency personnel in the execution of the contract audit mission. This manual and revisions are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The cost is $27.75 for an indefinite subscription which will include the manual and future revisions.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.1-408 Relationships—DCAA and Purchasing and Contract Administration offices.

(a) Organizationally, the DCAA is separate from, and independent of, purchase and contract administration offices. Audit reports and other services provided by DCAA are advisory and, as such, will be responsive to the needs of purchasing and contract administration offices and will be consistent with specific contract provisions and applicable regulations, e.g., ASPR.

(b) Areas of interest to the auditor often meet and overlap those of interest to purchasing and contract administration offices. A clear understanding of the responsibilities of DCAA auditors is essential to ensure continuous close cooperation and team work. These responsibilities are set forth in § 737.1-407.

(c) Purchasing and contract administration offices have responsibility for:

(1) Requesting contract audit service;

(2) Providing maximum allowable time for the conduct of audits;

(3) Furnishing the auditor, in connection with a request for audit, copies of any contracts (including change orders, supplements, amendments, and termination notices), cost statements, proposals, and other financial data submitted by contractors or, as appropriate, requested by the auditor;

(4) Established access to contractor records required by auditors, and

(5) Furnishing such other information, data, or technical service as may be required (such as the advice of industrial engineers on cost matters, copies of pricing memoranda, etc.) or otherwise may be useful in performing the audit.

(d) Contract audit services shall be requested by purchasing and contract administration offices when necessary in connection with:

(1) Development of procurement packages prior to solicitation.

(2) Pre-award surveys.

(3) Pricing procurement actions.

(4) Functional reviews of contractor performance.

(5) Progress payments, and

(6) Contract terminations.

(e) Contract audit services are performed automatically in connection with:

(1) Reimbursement of costs, and

(2) Problems and unsatisfactory conditions encountered by the auditor and within his purview.

(f) The independent professional advice of DCAA auditors is essential to good contracting. The purchasing and contract administration office must consider such advice. However, decisions of the PCO and ACO on contracting and contract administration matters often have to take into account many factors in addition to those presented by the auditors and will therefore represent the considered judgment of the contracting officer.

(g) The auditor is required to discuss all significant and potentially controversial problems, particularly those having a continuing impact on the reasonableness of pricing or on administration of the procurement program with the ACO prior to finalization of audit action. Where agreement on such problems cannot be arrived at locally, the matter should be elevated through the respective audit and contract administration chain of command for final resolution. Any other unresolvable disagreements concerning services provided by DCAA shall be referred to higher procurement authority for discussion and resolution with counterpart DCAA echelons.

§ 737.1-450 The Assistant Secretary of the Navy (I&L).

(a) SECNAV Instruction 5430.7J assigns to the Assistant Secretary of the Navy (I&L) certain responsibilities for administration of the Department of the Navy. Included therein is responsibility for: All matters related to the procurement, production, supply, distribution, alteration, maintenance, and disposal of material; all transportation matters; the acquisition, construction, utilization, improvement, alteration, maintenance, and disposal of real estate and facilities, including capital equipment, utilities, housing and public quarters; printing and publications; labor relations with respect to contractors with the Department of the Navy; industrial security; and the Mutual Defense Assistance Program as related to the supplying of material.

(b) In addition to the responsibilities set forth above, individual responsibilities set forth in paragraph 6d include, but are not limited to:

(c) Liaison with the Assistant Secretary of Defense (Installations and Logistics), the Renegotiation Board, and, for those matters within his area of responsibility, the Assistant Secretary of Defense (International Security Affairs).

§ 737.1-451 Headquarters Naval Material Command.

§ 737.1-451-1 Authority and responsibility of the Chief of Naval Material.

Paragraph 3 of SECNAVINST 4200.29 of 3 August 1973 and paragraphs 5e and 6 of SECNAVINST 5400.13 of 24 August 1971 set forth the areas of authority and responsibility of the Chief of Naval Material for the performance of Departmentwide procurement functions and services.

§ 737.1-451-2 Organization and functions of the Headquarters Naval Material Command.

(a) The Headquarters Naval Material Command is composed of Chief of Naval Material, Vice Chief of Naval Material, Deputy Chiefs of Naval Material, Project Managers, Special Assistants, and Division Directors. In addition to rendering staff assistance to the Assistant Secretary of the Navy (I&L) in the performance of his logistic function, the Chief of Naval Material is responsible for the functions set forth below:

(1) Formulating, promulgating, and effectuating procurement contracting policies and methods to be followed by the Naval Material Command (NMC) in meeting the material requirements of the operating forces, and coordinating and directing the efforts of the Naval Material Command in this respect; and evaluating the effectiveness and efficiency of Navy procurement;

(2) Formulating, promulgating, and effectuating policies and methods of the NMC governing production of material; assisting the bureaus, offices and systems commands of the Navy Department and industry to achieve

production which is efficient, economical, and timely; and coordinating production activities of the NMC with other segments of the Department of Defense and appropriate civilian agencies;

(3) Exercising policy direction and coordination control over all field contract administration offices (§ 737.1-201(c)(7)) within the Naval Material Command and conducting reviews of these activities to ascertain basic problems in the procurements being managed and the activities' effectiveness in eradicating or minimizing these problems.

(4) Formulating, promulgating, and effectuating policies and methods of the NMC relative to supply programs, including standardization, cataloging, property disposition and inventory control; and reviewing compliance therewith;

(5) Collaborating with the Chief of Naval Operations and Commandant of the Marine Corps in reconciling difficulties encountered in meeting the material requirements of the operating forces;

(6) Providing for representation of the Navy's material requirements before other Government agencies controlling the availability of products, materials, and facilities;

(7) Coordinating and integrating industrial mobilization planning within the Department of the Navy;

(8) Developing and coordinating Navy policy on labor relations and industrial manpower with respect to private industry; and

(9) Implementing and administering the Industrial Security Program which operates outside of the Department of the Navy.

§ 737.1-451-3 Procurement Policy Advisory Group.

(a) The Procurement Policy Advisory Group serves as an advisory group on procurement policies and practices within the Department of the Navy, as well as on other subjects allied therewith. Subjects for discussion may be presented by any Navy activity or by other components of the Department of Defense. The Group shall conduct free and full discussion of the problems, or problem areas, presented to it. Where agreement is reached on solutions to problems, such agreements will, as appropriate, be submitted as recommendations for official action.

(b) The Procurement Policy Advisory Group shall be chaired by the Assistant Deputy Chief of Naval Material (Procurement and Production). The Head, Coordinated Negotiation Staff (MAT02D), Headquarters Naval Material Command, shall act as Co-Chairman. The Group shall consist of the following: Senior negotiation personnel of the Naval Systems Commands Headquarters, the Office of Naval Research, Military Sealift Command, Bureau of Naval Personnel and Headquarters, Marine Corps; the Navy ASPR Committee Policy Member or his Alternate; the Head, Procurement Management Review Group; a representative from the Office of the General Counsel; and the Directors of the Procurement Policy and Planning Division (MAT 021) and the Procurement Control and Clearance Division (MAT 022), Headquarters Naval Material Command.

§ 737.1-452 Office of the General Counsel for the Department of the Navy; legal services in the field of business and commercial law.

Pertinent paragraphs of SECNAV Instruction 5430.25C are set forth below:

1. *Purpose.* To restate and delineate the organization, duties and responsibilities of the Office of the General Counsel of the Department of the Navy.

3. *Organization of the Official of the General Counsel.* a. The head of the Office of the General Counsel shall be designated the General Counsel for the Department of the Navy, shall be appointed by and be responsible to the Secretary of the Navy, and shall report to him as the Secretary may prescribe. The General Counsel is authorized to appoint, with approval of the Secretary of the Navy, three Deputy General Counsels.

b. The Office of the General Counsel shall include the Offices of Counsel for the Commandant of the Marine Corps, the Bureau of Naval Personnel, the Military Sealift Command, the Office of Naval Research, the Office of the Comptroller of the Navy, the Naval Air Systems Command, the Naval Electronic Systems Command, the Naval Facilities Engineering Command, the Naval Sea Systems Command, and the Naval Supply Systems Command. It shall also in-

clude such Offices of Counsel for their respective field activities and such Branch or Regional Offices as have been or may hereafter be established.

c. The General Counsel shall furnish or arrange to furnish legal services for which the Office of the General Counsel is assigned responsibility by paragraph 4, below, to other Naval Activities when it is mutually agreed such services are required. The Office of the General Counsel shall include any office established under this paragraph.

4. *Responsibilities of the Office of the General Counsel.* a. The Office of the General Counsel shall, except as otherwise provided below, be responsible throughout the Department of the Navy for providing legal services in the field of business and commercial law, including all legal services relating to:

(1) The acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the Naval Petroleum Reserves;

(2) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract;

(3) The Office of the Comptroller of the Navy;

(4) Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments and similar matters, including those in the Armed Services Procurement Regulation and Navy Procurement Directives and deviations therefrom; and

(5) Industrial security. b. The Office of the General Counsel shall be responsible for liaison and relations with the other departments and agencies of the Government with respect to the foregoing matters.

c. All patent legal matters submitted to the Secretary of the Navy, the Under Secretary of the Navy, and Assistant Secretary of the Navy, the Attorney General of the United States shall be forwarded via the General Counsel for the Navy for review and comment.

5. *Counsel for the Marine Corps, Bureaus, Offices and Commands.* For the Commandant of the Marine Corps and each Naval activity, specifically listed in paragraph 3, there shall be a single Office of Counsel which shall be responsible for providing in the Marine Corps or in such Naval activity all legal services for which the Office of the General Counsel is assigned responsibility by paragraph 4, above. Each such Office of Counsel shall be headed by a Counsel who shall be appointed by the Secretary of the Navy upon the joint recommendation of the General Counsel and the Commandment of the Marine Corps or the head of the Naval activity concerned, as appropriate. Such Counsel shall report directly to the Commandment of the Marine Corps or the head of such Naval activity, as appropriate, and shall also report, via the General Counsel, to the Secretary of the Navy, as he may prescribe.

6. *Lawyers in the Office of the General Counsel.* The lawyers in the Office of Counsel for the Commandment of the Marine Corps and for each Naval activity, including their respective field lawyers, shall be selected by the General Counsel subject to the approval of the Commandment of the Marine Corps or of the head of such Naval activity, as appropriate. The General Counsel shall prepare, or assign responsibility for the preparation of, performance rating reports for all lawyers in the Office of the General Counsel, and shall review all such reports. Personnel actions involving lawyers in the Office of General Counsel, such as changes in grade, transfers or terminations of services, and the establishment or elimination of position descriptions shall in all instances be subject to the approval of the General Counsel. The General Counsel with the approval of the Secretary of the Navy, may establish Regional or Branch offices of the Office of the General Counsel; and the General Counsel shall select and designate the Counsel and other lawyers therein.

7. *Uniformity, Integration and Supervision.* The legal services to be rendered by the Offices of Counsel listed in paragraph 3, the Counsel for Branch or Regional offices, and all other lawyers in the Office of the General Counsel, both departmental and in the field, shall be integrated, coordinated, and supervised by the General Counsel. The General Counsel shall also be responsible for achieving and maintaining, so far as practicable, uniformity in the application of legal principles with regard to matters for which the Office of the General Counsel is assigned responsibility by paragraph 4, above.

8. *Legal Documents.* Contracts and amendments thereto, modifications thereof, and other documents pertaining to matters for which the Office of the General Counsel is responsible shall be submitted to the appropriate lawyer or lawyers of that Office for an opinion as to form and legality, and for any additional pertinent comment or advice prior to execution.

§ 737.1-452-1 Legal approval of contracts.

The Office of the General Counsel shall approve as to form and legality all contracts to be entered into by any procuring activity. Any such contract may be executed by a contracting offi-

cer without securing further approval as to form and legality.

§ 737.1-454 Responsibilities of the Navy Publications and Printing Service (NPPS).

By public law and mandatory regulations issued by the Congressional Joint Committee on Printing, the Congress of the United States holds the Secretary of the Navy responsible for insuring that all publications and printing financed in whole or in part by Department of the the Navy funds (appropriated or nonappropriated), or which are produced or procured in its behalf, are essential and necessary in the conduct of its business and are economically prepared, produced, and distributed. The Assistant Secretary of the Navy (Installations and Logistics), supported by the Navy Publications and Printing Policy Committee, is assigned responsibility by the Secretary of the Navy for matters relating to publications and printing. The Navy Publications and Printing Service is the Department of the Navy central service for publications and printing, chartered by the Department of Defense to operate under the Navy Industrial Fund to provide printing and related service or products for the Department of the Navy and for agencies of the Department of Defense, and responsible for the conduct of a coordinated program.

(a) To assure the economical and efficient development of materials to be printed or duplicated and the procurement, production, and distribution thereof, including a corollary responsibility for the protection of classified information in accordance with the Department of the Navy Supplement (OPNAVINST 5510.1D); and

(b) To prevent or to remedy any neglect, delay, duplication, impropriety, or waste in the acquisition, production, and distribution of Department of the Navy publications and printing. (See § 737.1-108-51(c)(v), NAVSO P-35; § 737.1-201(c) (iv), (v) and (vi), Definitions; § 737.5-601 Procurement of Printing and Related Supplies.)

§ 737.1-600 Debarment, ineligibility, and suspension.

§ 737.1-601 Establishment and maintenance of records and lists of firms or individuals debarred, ineligible or suspended.

§ 737.1-601-3 Joint consolidated list debarred, ineligible and suspended contractors.

The Chief of Naval Material (MAT09G) distributes the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors to appropriate Navy activities. As an interim measure pending distribution of amendments to the List, appropriate activities will be notified when an individual or firm is added to the List.

§ 737.1-603 Grounds for listing and treatment to be accorded listed concerns.

(a) Authority to permit exceptions for Type A listings within category (iii) and for Type D listings has been given to the Chief of Naval Material. Exceptions will be granted only in extraordinary cases where the best interests of the Government may be served.

(b) All delegations of authority to contractors to settle terminated subcontracts should be revoked when such contractors are suspended. When it appears necessary to protect the interests of the Government, action to withhold payments to contractors should be initiated promptly and should not be deferred pending a determination by the Chief of Naval Material to debar or suspend. The Chief of Naval Material may initiate withholding action based on information available to him.

§ 737.1-604 Administrative debarment of firms or individuals (Type A).

Procuring activities may recommend debarment of firms or individuals for the causes listed in § 1.604. Recommendations should contain a full statement of all available facts with necessary supporting documents and be forwarded through channels to the Chief of Naval Material (MAT09G). Intermediate addresses should add pertinent comments and recommendations.

§ 737.1-605 Suspension of firm or individual.

The Chief of Naval Material may make determinations to suspend firms or individuals based on reports submitted in accordance with SECNAVINST 4385.1B. Referral to the Department of Justice shall be a prerequisite to suspension.

§ 737.1-700 Small business concern.

§ 737.1-702 General policy.

§ 737.1-702-50 Dissemination of listings of commodities and services purchased by Navy activities.

(a) In order to acquaint prospective prime contractors with the numerous types of commodities and services purchased by the Navy's widespread purchasing activities and to provide more effective local one-stop counseling to them, it is desirable that listings of commodities and services purchased by Navy activities be furnished to major Navy purchasing activities and to contract administration offices.

(b) The following activities shall furnish listings of commodities and services purchased to each of the purchasing activities listed in the Navy Small Business and Economic Utilization Personnel Directory and to the offices listed in paragraphs (c) and (d) of this section. The listings will be updated annually and distribution made by 31 July.

Naval Air System Command
Department of the Navy
Washington, D.C. 20361

Naval Electronic Systems Command
Department of the Navy
Washington, D.C. 22081

Naval Sea Systems Command
Department of the Navy
Washington, D.C. 20360

Headquarters, U.S. Marine Corps
Washington, D.C. 20380

U.S. Naval Research Laboratory
Washington, D.C. 20350

U.S. Navy Ships Parts Control Center
Mechanicsburg, Pennsylvania 17055

U.S. Navy Aviation Supply Office
Philadelphia, Pennsylvania 19111

U.S. Naval Regional Procurement Office
Long Beach, CA 90801

U.S. Naval Regional Procurement Office
Philadelphia, Pennsylvania 19112

U.S. Naval Regional Procurement Office
Washington, D.C. 20374

U.S. Naval Supply Center
Norfolk, Virginia 23511

U.S. Naval Regional Procurement Office
Oakland, California 94625

U.S. Naval Supply Center
Charleston, South Carolina 29408

U.S. Naval Ammunition Depot
Crane, Indiana 47522

U.S. Naval Supply Center
Puget Sound
Bremerton, Washington 98314

Portsmouth Naval Shipyard
Portsmouth, New Hampshire 03801

U.S. Naval Avionics Facility
Indianapolis, Indiana 46218

U.S. Naval Air Development Center
Warminster, Pennsylvania 18974

U.S. Naval Air Engineering Center
Philadelphia, Pennsylvania 19112

U.S. Naval Ordnance Station
Louisville, Kentucky 40214

(c) Contract administration offices which will receive listings of commodities and services purchased are the Naval Plant Representative Offices, Supervisors of Shipbuilding (SUPSHIP), and Directors Defense Contract Administration Services Regions (DCASR) listed in the DOD Directory of Contract Administration Service Components (DOD 4105.59-H).

(d) The following offices will also receive listings of commodities and services purchased:

Headquarters
Defense Supply Agency
Attn: DSAH-PS
Cameron Station
Alexandria, Virginia 22314

Chief of Naval Material
Attn: MAT 0212F
Department of the Navy
Washington, D.C. 20360

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.1-704 Small business officials.

§ 737.1-704-50 Council of Small Business Specialists.

To accomplish full coordination of effort in considering and resolving problems primarily affecting small

business concerns, there has been established a Council of Small Business Specialists for the Department of the Navy, the chairman of which is the Special Assistant for Small Business and Economic Utilization, ASN(I&L), and includes the senior small business specialists appointed by the Heads of the Procuring Activities. The senior small business specialists on the Council shall perform the following functions:

(a) Serve as assistants and advisors to develop new or improved policies and procedures for increasing small business participation in Navy procurement, and to accomplish unity of action on small business matters;

(b) Attend, upon request, Congressional hearings pertaining to small business matters for the purpose of presenting the Small Business matters as may be prescribed by appropriate authority.

§ 737.1-706 Set-asides.

§ 737.1-706-1 Documentation of small business set-aside action.

The contract file of each procurement in excess of $10,000 shall be appropriately documented by the small business specialist and the contracting officer to indicate the action taken relative to small business set-asides. Documentation shall be accomplished by the use of Form NAVMAT 4380/1 "Small Business/Labor Surplus Set-Aside Review," revised 9/73, obtainable from the following stocking point: Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Exceptions to the foregoing are procurements involving modifications to or orders placed against existing contracts; procurements involving negotiations with educational institutions; procurements resulting from acceptance of unsolicited proposals; orders against indefinite quantity type contracts.

§ 737.1-706-5 Total set-asides.

A total small business set-aside shall be made only when there is a reasonable expectation that bids or proposals will be received from a minimum of two small business concerns and that awards will be made at reasonable prices. In instances where solicitation is to be limited to a single business source, negotiation authority other than that used for small business set-asides shall be cited. See § 737.3-201-50(b).

§ 737.1-707 Subcontracting with small business concerns.

§ 737.1-707-4 Responsibility for reviewing subcontracting program.

(a) *Chief of Naval Material.* In those cases where the Navy has contract administration responsibility, the Chief of Naval Material (MAT 0212) shall assign to a single Navy procuring activity the responsibility for reviewing and evaluating the Small Business Subcontracting Program at a contractor's plant(s).

(b) *Procuring Activities.* The procuring activity, designated in accordance with paragraph (a) of this section is responsible for advising the contractor or subcontractor of the requirements of the program and for insuring that a program to fulfill these requirements is carried out on a continuing basis. The cognizant Field Contract Administration Office shall be advised by the designated procuring activity whenever a contractor or subcontractor is required to establish a Small Business Subcontracting Program that will be evaluated by the Navy, and such office shall assist the procuring activity in carrying out its responsibilities. Periodic formal reviews of contractor's Small Business Subcontracting Program will be accomplished by the small business specialist as the procuring activity, or by a Field Contract Administration office when so requested by the procuring activity, using for guidance an Evaluation Check-off Sheet as prescribed in § 1.707-4(c)(3). Advance notice of intention to conduct such surveys or visit plants shall be given by the small business specialist to the appropriate Contract Administration office. Personnel from the cognizant procuring activity, preferably from the Small Business Office, will visit contractors or subcontractors in the Program at least once a year to review their performance.

(c) *Field Contract Administration Office.* The designated procuring activity shall request the cognizant Field Contract Administration office to maintain continuous surveillance over the purchasing practices of prime contractors and subcontractors participating in the Small Business Subcontracting Program to insure compliance with the provisions of § 1.707-3. Such surveillance by the Field Contract Administration office will include observation of the extent to which consideration is given to the potentialities of small business concerns in make-or-buy decisions. The field Contract Administration office representative shall make appropriate representations to a contractor or subcontractor when a make-or-buy decision is contemplated which would adversely affect small business concerns and appears unwarranted in the light of the contractor's responsibilities under this Program. When requested by the procuring activity to conduct a formal review of a contractor's Small Business Subcontracting Program, using the Evaluation Check-Off Sheet as prescribed in § 1.707-4(c)(3), one copy of the completed report should be furnished to the requesting activity and the other copy to the Chief of Naval Material (MAT0212).

(d) *Prime and Subcontractor Performance.* In the event of unsatisfactory subcontracting practice by a contractor under this Program, the designated procuring activity should so notify the contracting officer and insure that the contractor is similarly advised on this action.

§ 737.1-900 Responsible prospective contractors.

§ 737.1-1000 Publicizing procurement actions.

§ 737.1-1002 Dissemination of information relating to invitation for bids and requests for proposals.

§ 737.1-1002-6 Paid advertisements in newspapers and trade journals.

Subject to the requirements of Part 4, Subpart H, the Head of a Procuring Activity may authorize the publication of paid advertisements, notices, or proposals as are deemed necessary in order to secure effective competition.

§ 737.1-1002-50 Announcement of new major system/project procurement.

The text of the synopsis to be published in the Commerce Business Daily shall be in the following format. The procedure for preparation and transmission set forth in § 1.1003-9 shall be used. Development sources sought:

(a) The Department of the Navy contemplates the procurement of contract definition studies leading to the selection of a contractor to design, produce, and deliver the following:

(Describe system's mission, operating characteristics, subsystems, etc., provided information is unclassified.)

(Describe scope of contractor's responsibility.)

(Describe extent of GFE.)

This procurement will follow the procedures required by DOD Directive 3200.9 of 1 July 1965 "Initiation of Engineering and Operational Systems Development." Solicitation of proposals will be restricted to a bidders list of qualified concerns. The preparation of this restricted bidders list will be undertaken by the ———— project office. It will be based on evaluation of applications to determine the capability of prospective offerors to perform the "Contract Definition" contract and design and production of ———— during the development and production contract. Interested firms as separate corporate entities or as proposed joint ventures should submit applications to the project manager, ———— (insert mailing address) project, ———— by ———— (insert date)

Information submitted should:

(1) Describe capability for design, systems analysis, financing, computer programing, and production. Include experience on work performed or being performed pertinent and specific in the areas under consideration.

(2) Furnish names and professional qualifications of engineers, technical, management and other key personnel who may be assigned as principal project officers for this task.

(3) Describe availability and capacity of facilities including access to labor supply.

(4) Furnish statement regarding industrial security clearance.

(5) Furnish financial statement including corporate structure.

(6) Describe in detail the overall management system, and how the system will meet Navy management and date requirements regarding such areas as cost control system criteria and technical performance measurement.

(7) Any other specific information pertinent to this particular procurement that merits consideration in our evaluation of the information submitted.

Regardless of any previously submitted information or information on file in the Navy, interested organizations must submit qualifying information requested by this specific synopsis. Award of contract definition contract will be made to two or more offerors selected by the Government based on managerial and technical excellence as evidenced in proposals received in response to a formal request for proposals presently scheduled for issue approximately ————. Work under "Contract Definition" contract will consist of the preparation and submission of firm proposals for the engineering development and production of ————. For purposes of identity, respondents should reference this synopsis No. ——.

§ 737.1-1004 Announcements of contracts valued at $1,000,000 or more.

(a) Announcement of any newly executed contract, including announcement of any modification to a previously awarded contract, valued at $1,000,000 or more, shall be forwarded for coordination to the Navy Chief of Information (CHINFO) and release by the Office of the Assistant Secretary of Defense (Public Affairs). In the case of a letter contract, the announcement will be forwarded to CHINFO (1) at the time of issuance of the letter contract, (2) when it involves any modification, and (3) at the time of its conversion to a definitive contract. No public release (including advice to the prospective contractor) shall be made until such time as designated by CHINFO. All necessary precautions shall be taken to prevent the unauthorized disclosure of information prior to the designated release time.

(b) *Submission.* Contract announcements shall be submitted in accordance with the following procedures:

(1) Two (2) copies of the covering letter forwarding the announcement shall be prepared. The covering letter shall indicate:

(i) That the information contained in the announcement is unclassified;

(ii) Any areas of possible sensitivity and of any high level interest.

(iii) That the proposed announcement has been coordinated with appropriate offices of the Chief of Naval Operations (OPNAV), the Commandant of the Marine Corps, as appropriate, cognizant program managers or sponsors to insure the accuracy of the wording and data to be released; and

(iv) The OPNAY codes or other identifications of the persons with whom the staffing was conducted.

(2) Five (5) copies of the announcement shall accompany the covering letter and the announcement shall include:

(i) Full, simple and unclassified description of the supply or service being procured;

(ii) The new total dollar value of the overall contract, along with the new commitment, if the contract announcement is a modification to a previously awarded contract. Sample formats of modification announcements are illustrated in (f) below.

(iii) The name and telephone number, appearing at the bottom left corner of the announcement, of the person handling the contract announcement.

(c) *Security Review.* Routine contract announcements are exempt from the security review process. However, full security review is required for contract announcements which are accompanied by amplifying press releases.

(d) *Exceptions.* Exceptions to the foregoing requirements may, and should, be sought from CHINFO when the urgency of the procurement warrants such action.

(e) *Requests for Extensions.* If, after submission of the contract announcement, it is determined that (1) award will not be made concurrently with

public announcement thereof, or (2) award will be delayed considerably subsequent to its announcement, the Navy Chief of Information (01-22) shall be advised immediately in advance of the scheduled release time and a request for extension of release shall be made.

(f) *Format.* To provide a more succinct understanding to the public of the procurement action being awarded, Procuring Activities shall insure adequate explanation in public announcements of the specific type of procurement action being awarded (i.e., state that the Navy has exercised a "contract option" or negotiation of a "change order"). Sample formats of contract modification announcements, containing minimum required information, are illustrated below. Formats may be enlarged upon or altered to suit the circumstances of the procurement.

NOTICE OF AWARD OF CONTRACT MODIFICATION

———— (name of Contractor) is receiving modification number ———— to previously awarded Contract No. ———— issued by the ———— (activity). This modification increases the value of the basic contract by $——, the new total value of the entire contract is—

Insert one of the following as appropriate:

(i) This modification is the ———— (no. of increment, i.e., second, third, etc.) increment of this ———— (length of multi-year contract, i.e., three, four, etc.) year multi-year basic contract.

(ii) This modification covers the purchase of an additional quantity of ———— (quantity and item, e.g., 500 widgets) being produced under the basic contract. (If appropriate, indicate that the modification is the result of a competitive negotiated procurement).

(iii) This modification covers the exercise of an option for an additional quanity of ———— (quantity and item, e.g., 200 gadgets) being produced under the basic contract.

(vi) This modification covers the negotiation of change orders issued under the basic contract which provides for the purchase of ———— (quantity and item being purchased)

The contractor indicates that the work (is being) (will be) performed at ——— (city and state)

NOTICE OF AWARD OF CONTRACT MODIFICATION DEFINITIZING A LETTER CONTRACT

———— is receiving a (name of Contractor) negotiated ———— (type of contract, i.e., FPI, CPIF, etc.) modification which definitizes previously awarded Letter Contract ———— at a (number) contract/target price of $——. The contract covers the purchase/construction of 150,000 widgets. The contractor indicates work will be performed at ———— (city and state). This is a ———— (procuring activity) Contract Modification ———— (number).

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.1–1007 Public release of long-range procurement estimates.

(a) Public releases of long-range procurement estimates shall be made by the Head of the Procuring Activity through use of the Department of Commerce Business Daily and other appropriate means for all procurements expected to exceed $100,000 in a fiscal year unless release of the information will (1) adversely affect procurement by encouraging undesirable practices or (2) indicate the existing or potential mobilization of the industry as a whole. Long-range procurement estimate releases shall include planned requirements beyond the current fiscal year whenever available.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.1–1100 Qualified products.

§ 737.1–1102 Responsibility for qualification.

The Navy frequently uses specifications with product qualification requirements where the designated Preparing Activity is an Army or Air Force organization, or even another Government agency. In such a case the Navy Custodian identified in the specification acts in a liaison capacity with the Preparing Activity.

§ 737.1–1104 Availability of lists.

(a) *To Suppliers.* The usual source for suppliers to obtain QPL (Qualified Products List) lists is the DOD Single

Stock Point (DOD SSP) located at the Naval Publications and Forms Center, Philadelphia. However, any Navy activity maintaining a set of QPL's may, upon request, and subject to the requirements of § 1.1104, make QPL information available by giving the supplier's representatives access to such lists; by furnishing them with reproductions, copies, or transcripts of the list or lists involved; or by other appropriate means. The exact method of making such information available is left to the discretion of the Navy activity concerned. However, when such information is made available to a supplier, all qualified products and the manufacturers and their plants listed for the grade, class, or type of products and the manufacturers and their plants listed for the grade, class, or type of products for which the information was requested, and the date of furnishing such data shall be included.

§ 737.1-1109 Inadequate competition.

A copy of correspondence directed toward increasing competition shall be forwarded to the Chief of Naval Material (MAT 042).

§ 737.1-1500 Options.

§ 737.1-1504 Establishment of procedure to insure timely exercise of contract options.

Each procuring activity shall establish a procedure to insure timely exercise of any contract option when such exercise is in the best interest of the Government in accordance with Part 1, Subpart 0.

§ 737.1-1900 First article approval.

§ 737.1-1902 Placement of additional procurements prior to first article approval of the same item under a previous contract.

(a) *General.* The purpose of a first article approval, as provided in § 1.1900, is to assure that the contractor can furnish a product that is satisfactory for the intended use and therefore minimize risks for both the contractor and the Government. Follow-on procurements have been made for items prior to Government approval of the first article test called for in the first contract. This procedure is considered to have increased the risks to the Government since possible increased costs and technical or legal complications are invited by such action.

(b) *Policy.* The award of additional procurements for the same item prior to first article approval of that item under a previous contract is inconsistent with the objective of reducing risks to the Government. Under unusual circumstances, urgent requirements may arise that would necessitate placement of additional procurement for the same item under a previous contract requiring first article approval of that item. Such urgency should be carefully evaluated against any possible increased costs and the potential legal and technical complications that may develop by premature contracting for items requiring first article testing shall be considered.

(c) *Approval.* The Head of the Procuring Activity or his designee shall:

(1) Be the only individual authorized to approve additional contracts to companies when an acceptable first article, as required under a previous contract, has not been approved;

(2) Insure that each contract involving follow-on procurement prior to approval of the first article is handled on a selective basis and in a judicious manner. The risks to the Government, particularly increased costs, if an acceptable first article is delayed, must be carefully considered and, if possible, avoided.

(3) Insure that the risks involved in follow-on procurements prior to first article approval, if such procurements are justified, are fully documented in the Procurement Directive as well as in the Business Clearance.

§ 737.1-2100 Advance procurement planning.

§ 737.1-2100-1 General.

(a) The purpose of the Advance Procurement Plan (APP) is to document, at an early point in time, the long range contractual method or methods which will be utilized for the procurement by contract of both the development and production of an individual item or system. It is the written result

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of advance procurement planning, as defined in § 1.2100-1, as the means by which the efforts of all personnel responsible for the procurement, by contract, are coordinated as early as practicable in order to obtain, on time, required items of requisite quality and at the lowest sound price.

(b) Since the APP is intended to document the contractual plans, including realistic milestones for acquiring a system or item, the detail to be included in a particular APP, including updates thereof, must necessarily vary with the magnitude of the program and the stage in development and/or production of the specific item or system to be acquired (for example, in accordance with SECNAVINST 5000.1, the advance procurement planning aspects accompanying an initial DCP should address, on a system basis and only in general terms, the intended business and contractual relationship(s) between the Navy and industry). Contractual planning may be firm or tentative.

(c) As a management tool the APP can serve many useful functions; however, the specific purpose, as set forth in paragraph (a) of this section, must remain dominant if the APP is used for any other purpose.

(d) The APP *shall not* be used as the sole support of a Determination and Finding (D&F).

§ 737.1-2100-2 Applicability.

(a) In addition to the requirements prescribed in § 1.2100-2 for the preparation of APPs on negotiated hardware procurements (not applicable to major overhaul programs), APPs will be prepared or will require coverage, in the manner prescribed in § 737.1-2101(d), for the following:

(1) Negotiated hardware multi-year procurements, if the total estimated value of the multi-year is in the amount of $1 million or more.

(2) In-house development efforts where it is anticipated that the eventual production effort will be contracted to industry and for which the production effort will require the preparation of an APP. The APP should be prepared at the commencement of the in-house effort and should show how the transition from in-house R&D will lead to production by industry.

(3) Other procurements which the Chief of Naval Material (MAT 023) designates as requiring APP preparation.

(4) Non-hardware procurements will be included in APPs covering system procurements under the conditions set forth in § 737.1-2101(d).

(5) A system APP shall be prepared to accurately portray the provisions of each DCP.

(6) Foreign Military Sales (FMS) requirements where the FMS requirement is:

(i) To be included under a contract for Navy requirements for the same or similar item, or

(ii) Under a separate FMS contract and where the period of performance thereunder either overlaps of is consecutive with performance under a Navy contract for the same or similar items. The ASPR threshold for APP preparation shall be applicable to the combined estimate of the Navy/FMS requirements. At a minimum, the APP must include sufficient information to clearly show, by text and milestone chart, the FMS requirements impact on the Navy's requirements in the area of contractor performance, cost and delivery.

(b) Whenever emergency procurements under § 3.202 are justified as described in § 1.2100-2(b), the requirement for preparation of an APP is waived for that particular procurement. This does not automatically waive the requirement for an APP when there will be additional requirements for an item, and an APP will be prepared and approved for these future requirements prior to their procurement in accordance with § 737.1-2100-3.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.1-2100-3 Initiation of advance procurement planning.

(a) The initiation of timely APP preparation requires that the Acquisition Manager (AM), as defined in § 737.1-2100-4(a), must notify the appropriate contract group or division and commence forming the planning

council as soon as the Specified Operational Requirement (SOR) or Advanced Development Objective (ADO) is assigned to the Principal Development Activity (PDA) by the Chief of Naval Material (MAT 03). The APP must be prepared, submitted and approved in sufficient time so that it can be incorporated or referenced in the Technical Development Plan (TDP), or comparable plan.

(b) Advance procurement planning for items which do not require a TDP shall be initiated if the procurement meets the criteria set forth in § 1.2100-2, § 1.2100-3 and § 737.1-2100-2. If circumstances prevent such preparation, the APP shall be prepared and approved no later than each January for the ensuing fiscal year.

(c) Advance procurement planning and early preparation of an APP may in fact provide additional justification for the requirement of specific funding and may also contribute to program stabilization. The APP can show the optimal funding to provide the most economical contractual method and alternative contractual methods for less than optimal funding.

§ 737.1-2100-4 Responsibility for preparation.

(a) *Acquisition Manager (AM).* The Acquisition Manager (AM) is defined as that individual charged with overall responsibility for acquisition of weapons systems, individual items of equipment and facilities, as well as planning for logistic support of these end items. Project Managers, Project Officers, Program Directors, Commodity Managers and other officials responsible for the material program are considered Acquisition Managers for the purpose of this subpart.

(1) The Acquisition Manager, as defined above, in consultation with the appropriate contracting officer, shall ensure the preparation of each APP and updating thereof.

(2) The Acquisition Manager (AM) and/or the procuring activity are encouraged to require preparation of APPs for internal use for procurements not specified by § 1.2100 or this Subpart, even though submission to the Chief of Naval Material for approval is not required.

(b) Each organization shall make such organizational arrangements, including assignment of functions and responsibilities as necessary, to coordinate, establish and implement advance procurement planning and to the preparation of APPs. When the procurement of a system spans several procurement organizations, the AM shall coordinate the plans for all the organizations into preparation of an APP for the entire system.

(c) Each APP shall be updated:

(1) In accordance with specified milestones set forth in the plan and such planned date for update shall be set forth in the APP (Note: Approval of the APP will constitute an endorsement of the update schedule), and/or

(2) Whenever changes occur that will materially affect the method of procurement and/or objectives of the AP Plan.

(3) As appropriate and necessary in connection with DCP updates.

§ 737.1-2100-5 Approval.

(a) Advance procurement plans shall be approved by the Chief of Naval Material (CNM) or the Head of the Procuring Activity (HPA) in accordance with the criteria set forth in paragraphs (b) and (c) of this section. The HPA is authorized to delegate approval authority for certain APPs in accordance with paragraph (d) below.

(b) The CNM shall approve APPs in the following categories:

(1) All Systems APPs defined in § 737.1-2101(d).

(2) APPs for programs included in the current FYDP which have a total estimated RDT&E contractual cost in excess of the following thresholds:

	Million
NAVAIR	$5.0M
NAVSEA	5.0M
NAVELEX	1.0M
Misc	1.0M

and/or

(3) APPs for programs in the current FYDP which have a total estimated production contractual cost in excess of the following thresholds:

	Million
NAVAIR	$25.0M
NAVSEA	25.0M
NAVELEX	6.0M
Misc	3.0M

(4) APPs covering special cases not covered in paragraphs (b)(1) through (3) which have been specifically identified for CNM or higher level review.

(5) APPs in the foregoing categories shall be approved by the HPA prior to forwarding to NAVMAT for CNM final approval.

(c) The HPA shall approve APPs covering programs specifically designated for CNO review and approval covered by OPNAVINST 3960.8 and identified in OPNAVNOTE 3960 when they do not exceed the above thresholds. CNM approval is not required.

(d) Programs not in the above categories (paragraphs (b) and (c)) may be approved by either the HPA or his Flag designee.

(e) In addition to the approvals noted above, APPs shall be signed by the Acquisition Manager (AM) and the head of the contracts group (contracting officer).

(f) Copies of APPs shall be forwarded to MAT 02 as follows:

(1) APPs requiring CNM approval: ten (10) copies.

(2) APPs requiring only HPA or his designee approval: Two (2) copies.

(3) Upon submission of secretarial RANs/D&Fs, one (1) copy of the approved APP must be attached thereto.

(g) The content of Advance Procurement Plans is considered privileged information to the Navy and must be prepared internally.

(h) For APPs requiring CNM approval, a review of the program will be accomplished by Headquarters Naval Material Command and, providing it is in accordance with Defense procurement objectives and Navy policy, approval of the APP will be granted. The review of the APPs will be primarily directed toward determining the soundness of long range contractual plans in the APP.

(i) Based on the information provided and such other information which may be available, the CNM approval of the APP is defined to mean, specifically, that the long range contractual plans set forth in the APP are judged to be sound. It is recognized that the APP is a plan, subject to unforeseen events and changes which may require deviation from the contractual plans set forth. The Chief of Naval Material (MAT 02) should, however, be kept informed by either a memorandum or a revision to the APP when significant changes occur which affect the approved plan.

§ 737.1-2101 Guidelines for development of advance procurement plan.

(a) The § 1.2101 guidelines are flexibly outlined. Each plan must be self-supporting to the extent practical, but where necessary, references to specific parts or the whole of other documentation should be included in the APP rather than including redundant information. Referenced documents shall be made available upon request to facilitate review of the APP. If the procurement approach in the APP is supported by, or differs from, that contained in any document which has been approved at any level higher than the Chief of Naval Material, the document must be referenced and differences noted in the APP.

(b) Among the milestones the APP should identify are:

(1) The date the ILS Plan will be completed and/or

(2) Reference the existing ILS Plan.

(3) When the information becomes available, the milestone chart should show the estimated date of contract award for each item of Government Furnished Material (GFM) included in the APP and the point at which it will be available and, if different, the date of the GFM must be delivered to the systems integration contractor to preclude having a detrimental effect on the program.

(4) Test and evaluation to be accomplished.

(5) Approval for service use.

(c) While some programs may only have several decision points, others which are more complex may have many, especially if there are several major subprojects under one project. Though the primary concern is the procurement milestones, any other milestones or decision points which will

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effect the procurement should be indicated (e.g., for those programs meeting the thresholds of DODD 5000.1, the milestones for update of the Development Concept Paper (DCP), and for DSARC and OSD approvals should be identified).

(d) Section 1.2101(d) requires preparation of APPs on an individual item basis or on a project basis, however, a system APP will be prepared within the Department of the Navy for each complete system.

(1) A system APP shall be prepared to accurately portray the provisions of each DCP and shall designate approval authorities and responsibilities for the preparation of related lower tier subsystems and/or component APPs. Where no DCP exists, the system will cover:

(i) Procurements of a total cost of more than $1,000,000 or

(ii) Procurements by contract for studies, services and software where the total cost of the procurement will exceed $1,000,000 or

(iii) Any other procurement not covered in paragraphs (d)(1) (i) or (ii) of this section, but which may have an effect on the system development/production.

(2) In-house efforts related to the system will be discussed and the relationship shown between this effort and the system. If a sub-system is being procured under another APP, it is only necessary to reference the APP and indicate on the system APP milestones which reflect how the acquisition effects the system procurement. Where applicable, the intended relationships incident to accomplishing the total system integration function shall be addressed.

(e) The following important specific areas will be covered in the APP:

(1) Integrated Logistics Support (ILS) is necessary in all procurements. Just as it is necessary to plan the procurement of hardware for service use, it is important to procure the ILS for that hardware. Assurance shall be provided in the APP that provision has been made to procure that ILS. An Acquisition Logistician shall be designated for each program, identified in the APP, and shall take part in APP Council meetings to insure provision is made for the procurement of required ILS. Where ILS planning has already been done in a TDP or ILS plan, such document need only be referenced in the APP.

(2) The APP shall contain a discussion of the technical and economic risks in the program. The discussion should avoid nebulous words which are not well defined and which would convey different meanings to different persons. The discussion shall outline (i) what has been accomplished to eliminate risk, (ii) the results of testing that took place, and (iii) a comparison of these test results with the goals established for the item or program at its inception. When no test results are available, the comparison may be made to similar programs which had similar developments in the past. When the terms high, medium, low, or no risk are used, an explanation as to how this determination was made shall be included. It may be sufficient to reference specific parts of an approved TDP, or equivalent document.

(f) *Technical data package for reprocurement purposes.* (1) The purchase of a technical data package for the intended purpose of future competitive reprocurement must be carefully considered because it is an expensive element in the acquisition of data and contributes in a great measure to the cost of buying military hardware. The decision to buy such a data package is difficult because it must be made well in advance of the contracting phase for production; and it must be correlated with the plan to obtain competition which, when made in connection with the development of the long range procurement plan, must be documented in the APP. Even though the APP may provide for the planned purchase of a reprocurement technical data package, the actual purchase of the data package must be deferred until such time as a realistic determination can be made as to whether competitive reprocurement of the hardware is appropriate and practicable. In reaching the decision to purchase the data package, its estimated cost and benefits to be derived from the use of the data package for competitive reprocurement purposes must

be carefully analyzed and documented in the APP. This decision is to be appropriately reflected in the evolution of the APP and shall identify the contents of the data package that best meet the need for procuring follow-on hardware by competition and outline the proposed contractual plan for acquiring the data package. The contractual plan should also consider and define the rights the Government will have to use the entire data package for competitive procurement (see Part 9, Subpart B). Technical data specified in a contract for delivery is subject to the rights established by the appropriate Rights in Technical Data clause of Part 9, Subpart B, required to be made a part of the contract. A contractor, therefore, may be allowed to deliver certain technical data with restrictive-use legends when the data pertains to items, components or processes developed at private expense. Restrictive-use data cannot be used for competitive procurement. Thus, restrictive-use data furnished as part of a technical data package for competitive reprocurement can limit the usefulness of the entire package.

(2) In deciding whether to plan for the purchase of a technical data package for competitive reprocurement of hardware, it would not be appropriate to plan for such a purchase if, for example:

(i) A one-time requirement is involved;

(ii) The hardware is expected to be or can only be procured from a single source because of design considerations and technical know-how possessed by that source;

(iii) Commercially available hardware from a number of sources will satisfy requirements;

(iv) Procurement can be made initially on the basis of performance specifications even though a technical data package may eventually be required for substantial follow-on procurements to be contracted to industry;

(v) Limited quantities will be procured and competition is considered remote in view of substantial start-up costs and extensive lead time required for a new source;

(vi) Procurement of hardware is to satisfy an interim requirement and for a limited quantity while awaiting future production results from an ongoing R&D effort;

(vii) The hardware is being purchased for a unique purpose (i.e., side-by-side testing with functionally-equivalent equipment, or a "one-of-a-kind" hardware for test and evaluation);

(viii) Breakout of components for future competitive procurement (§ 1.326) is desired but the design of the end item is not yet considered sufficiently stable for breakout from the prime contractor and the risk of the procurement of data is considered too great;

(ix) The design of the hardware is not sufficiently stable and further design or engineering effort is anticipated or required; and

(x) A determination has not been made as to the earliest point at which it is practicable to introduce competition, considering performance, safety, reliability, maintainability, or delivery requirements.

(3) An estimate must be developed as to the probable net savings anticipated if a technical data package were to be acquired for competitive reprocurement (will substantial net cost savings result, considering the offsetting factors of: costs of the technical data package, the potential risks inherent in the use of the package by a competing source, probable technical risks as to performance, reliability, maintainability of the equipment, desirability of obtaining identical or functionally and physically interchangeable items).

(4) If competitive procurement is not practicable, the type of data that is needed for use with the delivered equipment should be specified. Thus, for example, in lieu of reprocurement data package, engineering data to enable installation, testing, training, maintenance, or repair should be obtained, including computer software (if appropriate).

(5) If competitive procurement of the hardware is determined to be practicable, the type of data package should be identified:

(i) Complete data package (specify appropriate MIL-SPEC);

(ii) Performance-type specification (this form of data package should be given serious consideration when the end item is not complex or it is believed that a complete technical data package cannot be effectively used by other than the originator of the hardware).

(g) Whenever APPs do not schedule the introduction of competition for the end item, the following information concerning breakout shall be included in such plans:

(1) A statement that § 1.326 is being complied with;

(2) Identification of components for which a decision to breakout has been made, and brief discussion of acceptability of risks and estimated overall cost savings;

(3) With respect to those components which have been reviewed and earmarked as being susceptible to breakout pursuant to § 1.326-3, the number of items included thereunder shall be indicated and identified if their number is sufficiently small to do so without imposing an excessive administrative burden, briefly stating the reason why such components are not now subject to an affirmative decision to breakout;

(4) If the listing of the components under paragraph (g)(3) of this section will impose an excessive administrative burden, the Advances Procurement Plan shall state that the documentation required by § 1.326-5 has been prepared and will be available for review by representatives of the Chief of Naval Material. Such documentation will be reviewed by the Chief of Naval Material on a selective test basis;

(5) Identification of components of systems and sub-systems not susceptible to breakout shall not be made in the APP but a listing thereof, and a brief statement as to the reasons for their nonsusceptibility, shall be maintained on file in the procuring activity subject to review by the Chief of Naval Material.

§ 737.1-2101-1 Establishment of cut-off dates.

Advance procurement planning is a continuing process. The APP only represents the plans at a single point in the process. To allow for an orderly processing, the Acquisition Manager shall establish a cut-off date and the APP shall be prepared and submitted with the information available as of that date. The APP need not be redrafted if changes that occur prior to the date of submission to the Chief of Naval Material (MAT 023) do not effect the contractual method(s) to be used. A memorandum shall be attached to the APP indicating the changes that have occurred.

§ 737.1-2101-2 Classification of APPs.

Because of their planning nature, APPs which do not contain classified information shall be marked "For Official Use Only" and be handled and safeguarded as required for documents so marked.

§ 737.1-2101-3 Execution of advance procurement plans.

Where circumstances dictate, procuring activities may proceed with the execution of the plan, pending its approval, up to the point of issuance of Request for Proposals or Quotations.

§ 737.1-2101-4 Sample format.

(a) In accordance with the guidance discussion contained in § 1.2102, it is intended that the APP be a flexible document and that the content thereof should be held to the minimum essential data required to support the plan. The planning should be appropriate to the plan involved and address the total system or component system, as appropriate.

(b) The SYSCOM/Procuring Activity procurement plan identified should define and justify selected alternative(s). Discussion of other procurement alternatives considered should demonstrate to the reviewing officials that the alternative(s) selected is/are the alternative(s) in the Government's best interest.

(c) The following illustrative format is designed to give guidance in the preparation of APPs by Navy/Marine Corps elements.

ILLUSTRATIVE ADVANCE PROCUREMENT PLAN FORMAT

Page———

ADVANCE PROCUREMENT PLAN NO.

Description of item ———————————
Project ———————————— ———
Project manager ———————————— ——
(Code and name)

DESCRIPTION OF PROJECT OR ITEM

———————————————————

———————————————————

———————————————————

———————————————————

———————————— (Contracting Officer)

———————————
Date

———————————— (Procurement Representative)

———————————
Date

Approved:
(Project Manager)———————————

———————————
Date

ILLUSTRATIVE FORMAT GENERAL PROVISIONS

ADVANCE PROCUREMENT PLAN (NARRATIVE PORTION)

1. Item or system.
2. Program identity.
3. Planned funding.
   A. R&D.
   B. Production.
4. Delivery requirements.
   A. R&D.
   B. Production.
5. Estimated total development costs.
6. Total estimated cost and quantity for production life.
7. Background history (a brief factual summary).
8. Evaluation of risks.
   A. Technical.
   B. Economic.
9. The SYSCOM/Activity procurement plan.
   Each planned procurement or effort, whether short-range or long-range, should be identified with respect to the following, as appropriate, and in such detail as is warranted by the particular phase of development and/or production.
   A. Scope.
   B. Estimated cost.
   C. Source(s) and basis for selection.
   D. Procurement plan/contract type.
   E. Negotiation authority planned and justification therefor.
   F. GFM.
   G. Technical data considerations.
      (1) Data to be available for procurement.
      (2) Data to be generated by proposed procurement.
      (3) Acquisition of data for competitive procurement.
10. Procurement alternatives considered:
11. Integrated Logistics Support (ILS) planning:
   A. Milestone date for completion, *or*
   B. Identify by reference if completed.
12. Sub-system/component breakout:
13. Test and evaluation-service approval:
14. Milestones for updating.
15. Milestone chart.
   Statement to the effect that attached milestone chart provides a graphic presentation of the objectives stated in the narrative and of the timing of milestones leading to the attainment of the objectives.
16. Identification of members of the Planning Team.

Subpart B—Procurement by Formal Advertising

§ 737.2–100 Use of formal advertising.

§ 737.2–103 General requirements for formal advertising.

Contract Clearance. See § 737.1–403–51.

§ 737.2–200 Solicitation of bids.

§ 737.2–203 Method of soliciting bids.

§ 737.2–203–1 Mailing or delivering to prospective bidders.

Not less than three copies of the invitation for bids shall be mailed (or delivered) to each prospective bidder.

§ 737.2–300 Submission of bids.

§ 737.2–303 Late bids.

§ 737.2–303–2 Consideration for award.

The determination as to whether a late bid may be considered for award normally shall be made by the contracting officer of the activity issuing the Invitation for Bids (see § 737.1–401–51(b)). Where the number of late bids imposes an undue administrative burden on the contracting officer, he may delegate this responsibility on a continuing basis to a responsible official of the purchasing activity. Such delegation shall be made in writing and only to such person who, by reason of experience or otherwise, is considered by the contracting officer to be fully competent to discharge this responsibility.

§ 737.2–305 Late modifications and withdrawals.

(a) The determination as to whether late receipt of a modification or withdrawal was due solely to one of the reasons set forth in § 2.303–2 shall be made by the contracting officer of the activity issuing the Invitation for Bids (see § 737.1–401–51(b)), except that such responsibility may be delegated under the same conditions as apply to late bids in § 737.2–303–2. This determination shall be made in advance of any determination which may be made in accordance with paragraph (b) of this section.

(b) Determinations, as to whether late modifications received from an otherwise successful bidder are favorable to the Government shall be made only by the contracting officer of the activity which evaluates the bids, which the prior approval of Counsel where Counsel is assigned to such activity.

§ 737.2–400 Opening of bids and award of contract.

§ 737.2–404 Rejection of bids.

§ 737.2–404–2 Rejection of individual bids.

(a) *Collusive Bids.* In accordance with the requirements of § 1.111–2, the contracting officer shall report all bids he considers were not independently arrived at in open competition or are collusive, or were submitted in bad faith. Awards shall not be delayed because of the reporting requirements prescribed by § 1.111–2, except as otherwise deemed necessary or desirable by the contracting officer.

§ 737.2–406 Mistakes in bids.

§ 737.2–406–3 Other mistakes.

(a) Authority to make the administrative determinations described in § 2.406–3(a)(1) is hereby delegated, without power of redelegation, to the Head of the Contracts Division (as defined in § 737.1–201(c) of each purchasing activity of the Department of the Navy having legal counsel available. If legal counsel is not available, then the determination will be made by the Deputy Commander for Purchasing, Naval Supply Systems Command.

(b) Authority to make the administrative determinations described in § 2.406–3(a) (2), (3), and (4) is hereby delegated, without power of redelegation to the following:

(1) Assistant Commander for Contracts, Naval Facilities Engineering Command, when arising under invitation for construction, maintenance, or repair of public works; and

(2) Deputy Commander for Purchasing, Naval Supply Systems Command, when arising under invitations for supplies or services.

§ 737.2-407 Award.

§ 737.2-407-6 Equal low bids.

See § 737.1-850(f).

§ 737.2-407-9 Protests against award.

(a) *Protests Before Award.* Where it is known that protest against the making of an award has been lodged with the Comptroller General (GAO), a determination to proceed with award under § 2.407-8(b)(3) shall be made at the next higher level within the purchasing activity than the Contracting Officer who is to execute the contract. When a filed purchasing activity is notified that a protest against the making of an award has been lodged with the Comptroller General, the notice to the Comptroller General of the intent of the purchasing activity to make an award under § 2.407-8(b)(3) shall be via the Command Bureau, or Headquarters which advised of the protest, and award shall be withheld until receipt of the advice of the Comptroller General concerning the current status of the case.

(b) *Protests After Award.* Protests addressed only to the purchasing activity shall be handled in accordance with § 2.407-8(a). In such matters field purchasing activities should obtain the views of the Systems Command, Bureau or Headquarters having procurement cognizance whenever such action is considered desirable. When a field purchasing activity is notified that a protest has been lodged with the Comptroller General (GAO), all information necessary to reply to the protest shall be submitted as promptly as practicable to the Systems Command, Bureau or Headquarters which forwarded notice of the protest. All pertinent records, documentation and factual data shall be reviewed by cognizant legal counsel prior to reply to the Comptroller General.

§ 737.2-450 Procedures for requesting decisions from the Comptroller General prior to contract award.

(a) Except for "mistake in bid" cases (see § 737.2-406-3), contracting officers may request advance decisions directly from the Comptroller General, when necessary for the prompt resolution of legal questions as to the award of an advertised contract. Examples of questions which may be referred to the Comptroller General are those which involve late bids, nonconforming bids, and informalities in bids. Such requests shall be accompanied by all necessary records, exhibits, and factual data; shall be reviewed by Counsel; and, in the case of field activities, shall be submitted via the cognizant procuring activity. A copy of each written communication, as well as the Comptroller General's reply, shall be furnished to the Chief of Naval Material (MAT021).

(b) The foregoing procedure is not authorized (1) where the decision is likely to alter existing procedures or practices, or (2) where the question is one of unusual importance. Questions involving either of these two cases shall be referred through channels to the Chief of Naval Material (MAT021) for appropriate action.

Subpart C—Procurement by Negotiation

§ 737.3-200 Circumstances permitting negotiations.

§ 737.3-201 National emergency.

§ 737.3-201-50 Memorandum for file.

(a) *General.* A memorandum for file shall be prepared to justify each procurement negotiated under authority of 10 U.S.C. 2034(a)(1). The memorandum for file shall be signed by the contracting officer unless the signature of a different person is prescribed. Where procurements are negotiated under 10 U.S.C. 2304(a)(1) in furtherance of small business, labor surplus, or disaster area programs, the memorandum for file shall indicate the particular program involved. (For procedures pertaining to labor surplus areas, see Part 1, Subpart H.

(b) *Set-Asides for Small Business Concerns.* § 1.706-2 prescribes the negotiation authority to be used for small business set-asides. Where conventional negotiation has been used to place a contract involving a total set-aside, based either upon a joint determination or upon a unilateral determination, the memorandum for file shall

set forth a brief justification for the use of conventional negotiation in lieu of Small Business Restricted Advertising.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.3-202 Public exigency.

§ 737.3-202-3 Limitation.

(a) In addition to the circumstances authorized in § 3.202-2, purchase requests citing "Rapid Development Capability (RDC)" as priority designator, are authorized to be negotiated under 10 U.S.C. 2304(a)(2). Contracting Officers need only cite this designator as justification in the determination and findings. However, purchase requests which do not cite (i) issue priority designator 1 through 6 under the Uniform Material Movement and Issue Priority System (UMMIPS), or (ii) Electronic Warfare QRC Priority, or (iii) Rapid Development Capability (RDC) Priority, shall be scrutinized and fully justified by the Contracting Officer prior to utilizing 10 U.S.C. 2304(a)(2) as authority for negotiation.

(b) In activities to which Counsel are assigned, the determination and findings required by § 3.202-3 shall be reviewed and approved as to form and legality by Counsel.

(c) Examples of the determination and findings required by § 3.202-3 are set forth in Part 30.

§ 737.3-205 Services of educational institutions.

§ 737.3-205-3 Limitation.

See § 737.1-403-56 concerning approval requirement for civilian employee training involving tuition payment.

§ 737.3-207 Medicines or medical supplies.

§ 737.3-207-3 Limitation.

(a) In activities to which Counsel is assigned, the determination and findings required by ASPR 3-207.3 shall be reviewed and approved as to form and legality by Counsel.

(b) An example of the format of the determination and findings required by § 3.207-3 is set forth in Part 30.

§ 737.3-208 Supplies purchased for authorized resale.

§ 737.3-208-3 Limitation.

(a) In activities to which Counsel is assigned, the determination and findings required by § 3.208-2 shall be reviewed and approved as to form and legality by Counsel.

(b) An example of the determination and findings required by ASPR 3-208.3 is and findings required by § 3.208-3 is set forth below in Part 30.

§ 737.3-210 Supplies or services for which it is impracticable to secure competition by formal advertising.

§ 737.3-210-3 Limitation.

(a) The contracting officer's determination and findings, required by § 3.210-3 to justify negotiation under § 3.210, shall include, directly below the date, the Roman numeral representing the applicable circumstances listed in § 3.210-2. Where none of the examples set forth in § 3.210-2 is applicable, the DD Form 350 coding of "26" may be inserted to denote "no example." This identification is to ensure accurate recording and correct statistical representation in the monthly Survey of Procurement Statistics of the Department of the Navy (NAVMAT P-4200).

(b) With respect to basic ordering agreements, see § 737.3-410-2(c).

(c) In activities to which Counsel are assigned, the D&F's required by § 3.210-3 shall be reviewed and approved as to form and legality by Counsel. Field purchasing offices without regularly assigned local counsel shall arrange with Counsel for their procuring activity for periodic reviews of such D&F's by Systems Command of Filed Counsel. See § 737.3-306-52(d)(6) for review by Counsel of D&F's that are submitted for Secretarial approval.

(d) Examples of the determination and findings justifying use of this authority are set forth in Part 30.

(e) The following is an example of a CDF with respect to Basic Ordering Agreements (BOAs) for the overhaul,

repair or modification of existing equipment under this authority:

CDF No.——

DETERMINATION AND FINDINGS—AUTHORITY TO NEGOTIATE CLASS OF CONTRACTS

Upon the basis of the following findings and determination, which I hereby make as [insert title of official] the proposed classes of contracts described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(10).

FINDINGS

1. The classes of contracts proposed (orders issued under Basic Ordering Agreements) will be for services and materials consisting of:

(a)(i) Change kits, together with installation instructions, as required to retrofit changes in aircraft, including related equipment installed therein (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer), hereinafter called "related equipment"; (ii) engineering, prototyping and testing of such changes; and (iii) technical manual changes or revisions, or new technical manuals, as required incident to such changes.

(b)(i) Change kits, together with installation instructions, for contractor-furnished ground support equipment, and new items of ground support equipment, as required incident to aircraft changes referred in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer) and (ii) technical manual changes or revisions, or new technical manuals, covering ground support equipment, as required incident to such changes.

(c) Changes or revisions, other than those referred to in subparagraphs (a) and (b) above, to existing technical manuals covering out-of-production aircraft and related equipment delivered by the contractor, as required to provide up-to-date information on operation and maintenance of such aircraft and equipment. For purposes of the changes and revisions covered in this subparagraph (c), aircraft and related equipment shall be considered out-of-production at such time as the last publication, or change or revision thereto, has been delivered under the production contract for such aircraft and equipment.

(d) Change kits, consisting of selected parts, materials, additional training units, graphic aids, data, maintenance training parts and services consisting of instructor updating or refresher training and contractor technical assistance on site for set-up and checkout of the change material for maintenance, operational and weapon system trainers, as required incident to aircraft changes referred to in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer).

(e)(i) Change kits, together with installation instructions, for contractor-furnished spares and repair parts and new items of spares and repair parts, as required incident to aircraft changes referred to in subparagraph (a) above (excepting such equipment as has been procured by the Government from sources other than the airframe manufacturer); and (ii) technical manual changes or revisions, or new technical manuals, covering spares and repairs parts, as required incident to such changes.

2. Orders within the scope of this Class Determination and Findings will include the furnishing of all parts, components, and documentation necessary to make changes to delivered aircraft, including their related equipment, their ground support equipment, and the affected spares therefor, and the installation instructions will present by text and illustration of such kits by Government personnel; however, such orders will include the furnishing of only such parts, components, and documentation as are necessary therefor. The work to be performed under each basic ordering agreement will relate only to previously produced aircraft and related equipment and documentation; it will not include any research and development effort, nor will it include the furnishing of any parts, components, subassemblies, or materials which are not an integral part of the work described above.

3. Changes and developments in the design, equipment, or outfitting of military aircraft are required on a continuing basis in order to improve safety, combat readiness, and general capabilities. Such changes and developments most frequently occur after partial delivery of aircraft and at a point in production where it is no longer practicable to incorporate them in production in some of the aircraft remaining to be delivered; and they may occur after the aircraft model is out of production. Accordingly, the proposed basic ordering agreements will be utilized to make aircraft of a particular model substantially identical in configuration, and to provide delivered aircraft with the latest changes and developments. Publications furnished by the contractor also require modification in a timely manner in order to reflect changes and developments made in the aircraft, its related equipment, and its ground support equipment, and to provide new and improved operational and maintenance techniques.

4. The classes of contracts proposed are to be negotiated with the firms listed below and will relate solely to the specific aircraft

indicated, including their related equipment, their ground support equipment, and the affected spares therefor. These firms are the designers, developers, and sole manufacturers of the respective aircraft. These items are complex, technical, and specialized, and a thorough knowledge of their design, production, and assembly is essential in order that the various categories of work described above may be timely performed. Such knowledge with respect to these aircraft is unique to the contractors listed below; no other contractors have the requisite knowledge of and familiarity with these highly technical items to accomplish within the necessary time frame the work that has to be done. In the case of related equipment and ground support equipment involved in orders within the scope of this Class Determination and Findings, although the airframe manufacturer concerned may have subcontracted large portions of design, development, and manufacture to subcontractors, it is necessary, since the airframe manufacturer retains overall design control, that orders for the work involved be placed with him so as to permit him to maintain the compatibility of the related equipment and ground support equipment with the airframe. Because it is impracticable to secure competition in these classes of procurements, the use of negotiation and not formal advertising is justified.

Contractor	Aircraft
Sikorsky	SH/RH/VH-3 Series; CH-53 and UH-34 Series
Lockheed-Marietta	C-130, KC-130 and LC-130 Series
Lockheed-Burbank	P-3 and P-2 Series
Douglas	A-1, A-3, A-4 and TA-4 Series
North American-Columbus	RA-5, T-2 and OV-10 Series
North American-Los Angeles	T-39 Series
Bell Aerospace Corp.	H/UH/TH-1 Series
General Dynamics	F-111 Series
Kaman	H/UH-2 Series
Grumman	F-9, F-11, EA-6B, A-6, E-2, S-2, and E-1B Series
Boeing	CH-46 Series
Vought Corporation	A-7 and F-8 Series
McDonnell	YF/F/RF-4 Series

DETERMINATION

The proposed classes of contracts are for property and services for which it is impracticable to obtain competition. This Class Determination and Findings shall be effective for one (1) year from the effective date of the Basic Ordering Agreement, and shall apply to all orders issued during the effective period unless such authorization is suspended or cancelled by the purchasing office;

Date ————

Signature ————————————

[40 FR 1402, Jan 7, 1975, as amended at 41 FR 55513, Dec. 2, 1976]

§ 737.3-211 Experimental, developmental or research work.

§ 737.3-211-3 Limitation.

(a) The Findings part of any D&F under this negotiation authority shall include sufficiently detailed description of the work involved so that it will readily appear, describe which category of research and development, as defined in § 4.101(a), the proposed contract is to cover. Additionally, the Determination part of the D&F shall be cast so as to identify that particular type of research and development work (e.g., "The proposed contract is for exploratory development work as defined in § 4.101(a)(2)"). The term "research and development," as defined in § 4.101(a), does not cover Category (7) "Operational System Development" and Category (8) "Management and Support." In a particular case however, and under exceptional circumstances, the facts may be such that Categories (7) and (8) of § 4.101(a) would involve a procurement within the meaning of research and development. Therefore, contracting officers must be assured, when Categories (7) and (8) are involved, that the procurement falls under research and development definition prior to utilizing 10 U.S.C. 2304(a)(11) as negotiation authority.

(b) Requirements for Counsel review of Secretarial D&Fs shall be in accordance with § 737.3-306-52(d)(6). In activities to which Counsel is assigned, contracting officer D&F shall be reviewed and approved as to form and legality by Counsel.

(c) Example of the determination and findings justifying use of this authority is set forth in Part 30.

§ 737.3-212 Classified purchases.

§ 737.3-212-3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3-213 Technical equipment requiring standardization and interchangeability of parts.

§ 737.3-213-3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3-214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

§ 737.3-214-3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3-215 Negotiation after advertising.

§ 737.3-215-2 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3-216 Purchases in the interest of national defense or industry mobilization.

§ 737.3-216-3 Limitation.

See Part 30 for instructions pertaining to the form of determinations and findings.

§ 737.3-217 Otherwise authorized by law.

For small business set-asides see § 737.3-201-50(b).

§ 737.3-217-2 Application.

10 U.S.C. 2304(a)(17) preserves the authority to negotiate contracts when negotiation is authorized by law other than 10 U.S.C. 2301 et seq. Contracts may be negotiated under this authority only with the prior written approval of the Chief of Naval Material (MAT 02) except that such approval is not required in the following cases:

(a) Architectural and Engineering services under 10 U.S.C. 7212.

(b) Transportation Service by common carrier under 49 U.S.C. 65.

(c) Training of Civilian Employees under 5 U.S.C. 2308.

(d) Contracts awarded to the Small Business Administration in accordance with Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

Contracts so negotiated shall also cite the applicable authorizing statute. For example: Negotiated contracts resulting from joint determinations of total or partial small business set-asides shall cite 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act; Negotiated contracts for Architectural and Engineering Services shall cite 10 U.S.C. 2304(a)(17) and 10 U.S.C. 7212. Requests for authority to cite 10 U.S.C. 2304(a)(17) as the authority to negotiate in instances other than those noted above shall be submitted to the Chief of Naval Material (MAT 023) on the form "Request for Authority to Negotiate (NAVEXos 2759)" generally following the procedures in § 737.3-306-52 except that Secretarial authority will not be required.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.3-300 Determinations and findings.

§ 737.3-303 Determinations and findings by a contracting officer.

(a) *Determination and Findings.* See Part 30 for guidance in the preparation of determinations and findings.

(b) *Memorandum for File.* See § 737.3- 201-50.

(c) *Certification by Originator of Purchase Request.* Contracting officers are authorized to make determinations and findings with respect to individual purchases and contracts as set forth in § 3.303. Each Navy procuring activity shall establish procedures whereby the individual submitting the purchase request (requisition or other request form upon which the determination to negotiate is based) will certify to the accuracy of the facts and representations contained in such request; except that such certifications are not required in procurements citing authority of 10 U.S.C. 2304(a), (3), (5), (6), (7), (8), and (9). When (1) a purchase request (requisition or other re-

quest form upon which the determination to negotiate is based) cites Procurement Method Code (PMC) 3, 4, or 5 in accordance with NAVMATINST 4200.33A; (2) certification of facts would be required by the preceding sentence; and (3) the contracting officer has determined to negotiate a contract, then the contract file shall contain a statement signed by the contracting officer in lieu of the foregoing certification that the PMC data are accurate and current. These certifications and statements shall be retained in the contract file of the procuring activity concerned in those instances where the procurement does not require a Chief of Naval Material business clearance. Where a Chief of Naval Material business clearance is required, a copy of the determinations and findings with the certification or statement thereon, shall be furnished with the pre-negotiation clearance required by § 737.1-403-51(b). The Chief of Naval Material will, from time to time, conduct such reviews of procedures and records as appropriate to assure full compliance with this paragraph (c).

§ 737.3-305 Forms of determinations and findings.

§ 737.3-305-50 General.

(a) *Format.* The customary and approved form of a determination and findings (D&F) contains a title or heading, a D&F number and Systems Command or activity identification (or other identifying number such as procurement request number), an opening statement of authorization, a series of numbered findings under the subhead "Findings," one or more determinations (depending on the specific exception used and on the facts of the particular case) under the subhead "Determination(s)," and places for date of signature and signature. Determinations and findings by a contracting officer may be written on Standard Form 1036 or on a separate sheet of paper. Determinations and findings requiring approval of the Secretary of the Navy shall be prepared on a separate sheet of paper. Determinations and findings shall be in proper form, neat and free of grammatical, spelling and typographical errors.

(b) *Heading.* The following wording of a typical heading to a D&F for an individual contract is approved:

DETERMINATION AND FINDINGS

Authority To Negotiate Individual Contract For Experimental, Developmental, or Research Work

In a D&F for a class of contracts, the words "Class of Contracts" would replace the words "Individual Contract." It is desirable to indicate in the heading the precise negotiation authority covered by the D&F. As a general rule the bottom line of this heading would set forth, after the word "for," the title of the applicable paragraph of Part 3, Subpart B.

(c) *Numbering.* At the top right-hand corner of each D&F there should appear an identifying number or numbers. For purposes of administrative simplicity, it is suggested that D&F's (i) signed by a contracting officer or head of a procuring activity bear the same number as the procurement request, requisition or contract, or, (ii) signed by the Secretary be numbered by the originating activity in a simple numerical system which may bear a suffix of the originator's accounting number and/or the contract number to which the D&F applies. It is suggested that when numbering D&F's requiring approval by the Secretary no distinction be made between the numbering of D&F's and CD&F's (Class Determination and Findings).

(d) *Scope of D&F.* In general, it is desirable to confine each D&F to a single page, to set forth the four or five necessary findings as briefly as possible, and to confine them to only those facts which are necessary and relevant to support the one or more determinations being made. With respect to the determination or determinations, it is important to set forth only that one (or those) which are responsive to the various findings, and necessarily to confine them to the requirements and the particular language set forth under the applicable exception in the Act; further in this connection, it is important to guard against a determination in the alternative and to use cumulative language only when more than one determination is in fact supported by the findings (for example, under 10 U.S.C. 2304(a)(14), "substantial initial investment" *and* "extended period of preparation for manufacture"). Each D&F or CD&F for authority to negotiate shall clearly indicate that the use of formal advertising would be impracticable and the reasons therefor.

§ 737.3-306 Procedure with respect to determinations and findings.

§ 737.3-306-50 Definitions of terms.

As used in this NDP.

(a) *"Determination and Findings"* (D&F) means the document signed by the Secretary, Head of a Procuring Activity, or a contracting officer, which justifies negotiation of an individual contract or procurement (see § 3.301);

(b) *"Class Determination and Findings"* (CDF) means the document signed by the Secretary, which justifies negotiation of a class of contracts or procurements;

(c) *"Requests for Authority to Negotiate," or "RAN"* (NAVEXOS Form 2759) is the memorandum transmitting the D&F or CDF to the Secretary via the Chief of Naval Material (MAT 023). This memorandum contains detailed factual information explaining the necessity for procuring supplies or services by negotiation rather than by formal advertising and includes supporting documents and information required by this NPD;

(d) *"Advance Procurement Plan"* or "APP" means the long-range advance plan prepared as required by § 737.1-2100 and forwarded to the Chief of Naval Material for review and approval; and

(e) *"Negotiation Exception" and "EXCEPTION"* refer to the authority to negotiate in subparagraphs of 10 U.S.C. 2304(a) as described in § 3.201 through § 3.217.

§ 737.3-306-51 Submission of "Request for Authority to Negotiate" for individual purchase or contract.

(a) Except as provided in § 737.3-306-51(b), the "Request for Authority to Negotiate" (NAVEXOS Form 2759) will be used to request authority to negotiate an individual purchase or contract when a Determination and Findings by the Secretary is required by § 3.302. An original and two good, legible copies of the RAN, numbered in accordance with instructions set forth in § 737.1-403-53, and of the D&F proposed for signature of the Secretary shall be submitted to the Chief of Naval Material (MAT 023) (the D&F shall be prepared in proper form, neat and free of grammatical, spelling and typographical errors). The original (ribbon copy) of the RAN, when approved, and the signed D&F will be returned by the Chief of Naval Material. (Where negotiation EXCEPTIONS (11) or (13) under § 3.302 (i) or (iii) are cited, an original and three copies each of the RAN and the D&F shall be submitted to the Chief of Naval Material (MAT 023).)

(b) If an APP (Advance Procurement Plan) has been approved, as provided in § 737.1-2100, it may be used as the justification to support an individual procurement or a class of procurements as applicable. When the APP is used as the justification, the RAN (NAVEXOS Form 2759) should be utilized as the transmittal document for such APP and the accompanying D&F or CDF. The RAN should include:

(1) Any information necessary to update the APP and

(2) Any information required by this § 737.3-306 not previously furnished in the APP. All blocks including signature blocks, on the RAN should be completed.

§ 737.3-306-52 Preparation of RAN-NAVEXOS Form 2759.

The determination to formally advertise or to negotiate is governed by the specific facts in a proposed procurement. (See § 737.3-306-52(c) for RAN's on Classes of items.) When the decision is to negotiate and Secretarial authority is required, the RAN will set forth the basic facts in the following manner:

(a) *Description of Item or Services to be Procured.* So that it is clear to a nontechnical reader what is being procured, a brief general description is required, in addition to the customary military nomenclature; also, a statement of the general application and particular significance or specialized character is required. Though the description should avoid unnecessary technical details, it should cover in precise form all supplies or services being procured including the estimated value and the approximate number of items.

(b) *Justification.* The RAN must contain facts—not just conclusions—that (1) clearly and convincingly es-

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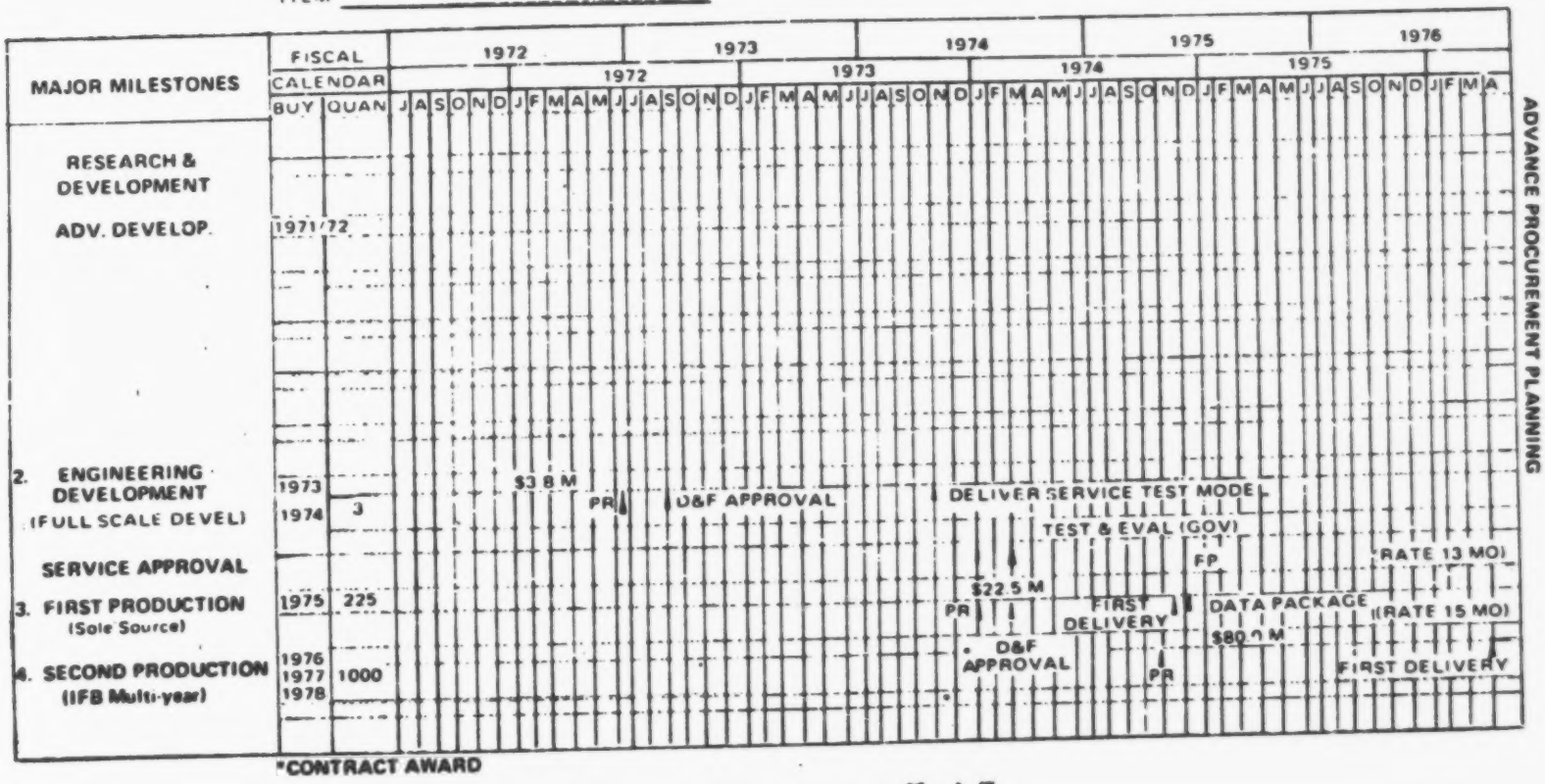
ILLUSTRATIVE FORMAT

ADVANCE PROCUREMENT PLAN NO. _____

PROCUREMENT PLANNING CHART

ITEM _____



*CONTRACT AWARD

545

Best Available Copy

tablish that the use of formal advertising would not be practicable and (2) support the proposed Determination and Findings. Detailed information requirements to be included in the justification, where applicable, are set forth in subparagraphs (1) through (10), the subject groupings of which are recited below.

1. Procurement plan
2. Advance planning coordination
3. Selection of prospective contractors for negotiation
4. Technical data requirements
5. Evaluation and conformance with specifications
6. Type of contract
7. Synopsis of proposed procurement
8. Government facilities
9. Additional information for all exceptions
10. Additional information for specific negotiation exceptions

(1) PROCUREMENT PLAN—Describe the procurement plan and proposed method of award. The following are examples of such a description: (i) (Where a number of named contractors are to be solicited for an R&D job) "Technical proposals will be solicited from the above-named firms after a conference on the objectives to be reached. Selection of the firm to perform the work will be on the basis of technical competence for the particular research and development work,"; (ii) (in the case of a competitive production item) "Award will be made to the responsive, responsible supplier offering the best price."

The plan specifically shall include:

a. The planned or estimated time to be allowed contractors to submit proposals;

b. An explanation of the urgency, if any, of the requirement, including the origin of the urgency representations, when lead time is cited as a basis for restriction of competition (such as delay in the procurement through use of formal advertising, etc.);

c. The basis for establishing the delivery requirements; and

d. The circumstances should be stated when the procurement requirement is the result of termination or other unusual action on a prior contract.

(2) ADVANCE PLANNING COORDINATION—In presenting information with respect to the procurement plan under (1), refer to any advance planning information previously prepared or furnished together with information with respect to any change(s) proposed in the present RAN which represents a departure or modification of prior procurement plans.

(3) SELECTION OF PROSPECTIVE CONTRACTORS FOR NEGOTIATION—Include an analysis of possible sources, indicating the following:

a. Extent of competition available; identity and location of firms to be solicited; the size classification of each concern to be solicited shall be indicated by the symbol (S) for small business, (L) for large business and (NP) for nonprofit or educational; and whether it is located in a labor surplus area;

b. Where appropriate, the caliber of technical or scientific personnel to be employed on the work;

c. A brief description of the method of evaluation used in selecting a contractor when the selection is based on technical skills, ability to produce, available capacity, or similar factors (this is particularly important when such evaluations result in a reduction in the number of firms to receive RFP's);

d. The exclusion of apparently qualified firms must be briefly and clearly explained (statements that the "XYZ Company is considered best qualified" or "no other sources are considered qualified" should be thoroughly supported in the justification presented);

e. The circumstances surrounding the proprietary position of a contractor;

f. The basis for representation as to advantageous lead time position of the selected contractor, including stage reached in the development or production of the item(s) (such as what production run) and the relation to the proposed procurement of any prior experience (such as R&D or the furnishing of prototype);

g. For follow-on contracts proposed for award on a single source basis, the method of original selection, of contractor should be identified, i.e., competition, design, competition, or technical competition.

(4) TECHNICAL DATA REQUIREMENTS—Where the absence of necessary technical data is a factor in contractor selection, the acquisition of technical data under the proposed procurement is basic to obtaining competition on future procurements (unless such data is already a requirement under another procurement). See NAVMAT Instruction 4000.15A. Each RAN shall state:

a. The procuring activity's time schedule to obtain, prepare, and issue technical data for purposes of obtaining competition;

b. The specific nature of technical data to be acquired, indicating the type and class of drawings, as defined in Specification MIL-D-70327 and MIL-STD-7, and including a reason for deviation if the drawings to be acquired do not fully comply with this specification;

c. The technical data to be required by the contract, or required by an existing contract, the delivery schedule for such data and for revisions;

d. Whether the technical data will be adequate for competitive procurement and when evaluation thereof is expected to be completed;

e. If the technical data will not be adequate for competitive procurement, in a full explanation state why data adequate for competition is not being procured and when it is expected that data adequate to obtain competition will be secured, evaluated, and made available for issue; and

f. If the technical data, though adequate for competitive procurement, will not be available in time for the next procurement of the item(s) concerned, an explanation as to why it is not feasible to effect delivery and evaluation of the data in time to permit their use for competitive procurement on the next buy, including information as to any delinquency in contract performance with respect to such data.

(5) EVALUATION AND CONFORMANCE WITH SPECIFICATIONS—Where service evaluation requirements are operative for the procurement under consideration, the RAN shall present the following, where applicable:

a. Status and results of service testing of the equipment. If tests have not yet been made, information as to why not and as to when such tests will be commenced and completed;

b. Where technical evaluation or operational evaluation by the Navy Operational Test and Evaluation Force has been completed, information as to whether equipment to be procured meets the operational specifications;

c. If the equipment to be procured does not meet the operational specification, information as to what waivers or deviations are being granted, why, and the source of approval of such waivers or deviations, with identification of the approving document(s); and

d. In the case of Requests for Authority to Negotiate under Exception (14), included in this paragraph (instead of under the "Basis of urgency representation," (10)d(i) below) information as to whether the procurement covers property being acquired in advance of approval for service use, and *one* of the following:

(i) A statement that, pursuant to OPNAVINST 4720.9B of 13 February 1963, the item(s) concerned require(s) only technical evaluation and that no further CNO approval is required;

(ii) A reference to CNO approval for service use; or

(iii) A reference to CNO authorization to procure in advance of CNO approval for service use. (In this case a copy of the related waiver of prior CNO approval for service use should be attached to the RAN.)

(6) TYPE OF CONTRACT—RAN's should specify the type of contract tentatively contemplated and, where a cost, CPFF, CPIF, of redeterminable fixed price type contract is being considered, a statement shall be included as to (i) the reasons for selection of such type of contract, and (ii) plans for use of a more advanced type of contract (i.e., firmed fixed price or fixed price incentive) on any continuing portion of the program. (Where a firm fixed price or fixed price incentive type contract is contemplated on the current procurement, a brief statement to that effect is sufficient except that where the bases for selection of a fixed price incentive over a firm fixed price are not readily apparent the intention to use an incentive type contract should be explained).

(7) SYNOPSIS OF PROPOSED PROCUREMENTS—Where the proposed procurement will not be publicized, a brief statement of explanation shall be included with reference to the specific basis for exemption under § 1.1003-1.

(8) GOVERNMENT FACILITIES—The Request shall indicate the type and estimated amounts of additional Government facilities, materials, equipment, special tooling, services, or property of any type to be furnished the contractor, such as Government-furnished materials to be incorporated into end-items or products, use of existing Government land, building or equipment, construction such as civil or public works or other incidental construction, modification, alteration, rearrangement or improvement of Government or contractor facilities, construction or installation of nonseverables, and Government-furnished services of any type. If facilities requirements or amounts cannot be precisely determined, so state and include known facts. If a facilities contract is involved or if a facilities business clearance memorandum was furnished the Chief of Naval Material pursuant to § 737.1-403-51(b)(2)a(xiii), reference should be made to such documents.

(9) ADDITIONAL INFORMATION FOR ALL EXCEPTIONS—Justifications for negotiation shall include:

a. The estimated cost of the proposed procurement, how obtained, and a brief description of the basis on which the estimated cost of the procurement was derived;

b. A description of the content of the RFP relating to the range of stepladder quantities, if applicable, and;

c. Where procurements involve electronic equipment requiring radio frequency approval, a statement that the frequency allocation has been approved by the Director, Naval Communications, in accordance with OPNAVINST 2410.11E.

(10) ADDITIONAL INFORMATION TO BE FURNISHED FOR SPECIFIC NEGOTIATION EXCEPTIONS.

a. When EXCEPTION (11) is proposed for use, include the following where applicable:

(Also see NAVMATINST 3900.3A of 5 July 1967 for requirments for RDT&E brief)

(i) R&D is frequently related to other previous or concurrent contracts. In such cases, a brief discussion of the accomplishments leading to, or the reason for, the proposed procurement and the specific objectives thereof;

(ii) A statement as to whether the project (or program) has been coordinated with the Director of Defense Research & Engineering with the other Military Departments, with other Federal agencies, or with other Navy agencies who have an interest in the same or similar R&D fields. If joint project, identify the Military Departments, other Federal agencies, and other Navy agencies involved and indicate the participation of each and the source of the current funding—whether the funds are Navy funds, those of another agency or split, giving dollar amounts of current funding in each case. The specific identifying project number and line items in the Navy R&D Program;

(iii) An estimate of future program costs not covered by the proposed D&F, when available from present procurement planning information;

(iv) Information as to whether a Technical Development Plan is required and if so, whether CNO approval for such plans has been obtained. Reference to any such approval should be cited.

(v) Information as to whether advance notice of the Government's interest in the particular R&D field was published in accordance with § 1.1003-2;

(vi) Where no small business is to be solicited for R&D, a statement setting forth the reasons for not soliciting small business;

(vii) Information as to whether the item to be developed, or the knowledge gained in its development, may have potential commercial application(s);

(viii) In order to establish a basis for decisions as to type of contract(s) to be used (see § 3.403(b)), the specific category of R&D work to be procured shall be identified. The category shall be one of those listed in § 4.201(a).

b. When using **EXCEPTION (12)**, the RAN shall contain sufficient information about the item being procured in order to identify the characteristics warranting a security classification. The simple statement that an item is classified is not sufficient. The nature of the security requirement should be identified in unclassified language to amplify what will be revealed by data included in the Invitation, such as "operating depth of submarines," "noise characteristics of the equipment," or "operating radius," etc.

c. RAN's based on standardization under Exception (13) shall clearly identify the benefits of such action, in accordance with the criteria under § 3.213, stating the extent of the coordination accomplished within the Navy, other Military Departments and the Department of Defense.

d. When **EXCEPTION (14)** is proposed for use, the RAN shall contain the following additional information on a sheet attached to Form NAVEXOS 2759:

(i) An affirmative statement of the technical and specialized nature of the item;

(ii) If urgency is the basis for negotiation (see § 737.3-306-52(b)(1)(b)), positive verification of delivery needs is required (e.g., include a list of ships and/or activity installation and dates of delivery required). If procurement is for property in advance of approval for service use, CNO waiver should be referenced and a copy attached (see 5(d) above);

(iii) Relation of the proposed procurement to any prior experience of the firm recommended, such as R&D or furnishing of prototypes. Include contract references, estimated costs and list all previous R&D and production contracts for the item including applicable values of the contracts, and the number of units, unit prices, and aggregate values of production contracts and RAN or Business Clearance Numbers;

(iv) Stage reached in the development or production (such as what production run) and any additional circumstances justifying the advantageous lead time position of the proposed contractor. State minimum production lead time for such contractor(s);

(v) Information establishing that the lead time for a firm other than the firm(s) recommended would unduly delay procurement. Show lead time for other firms with a breakdown in the following manner:

(A) Design and engineering;

(B) Manufacture of preproduction unit;

(C) Test and evaluation;

(D) Acquisition of materials, including tooling, and manufacture of first production equipment;

(vi) If duplication of investment by the Government is applicable, the type and value of the substantial investment shall be outlined, including any Government-furnished tooling and facilities;

(vii) The date the requirement originated or was received by the Navy requiring activity;

(viii) The date the Purchase Request was received in the contract division, purchasing division, or equivalent, of the contracting activity;

(ix) The date when funds were made available or are scheduled to be made available;

(x) A statement as to whether the procurement represents all quantities for which requirements are known, and funds, in whole or in part, are available. (Where requirements exist but the material purchased is to be delayed or ordered in increments

due to the nonavailability of funds, the purchasing plan for the entire requirement shall be furnished, including a schedule covering the release of funds. The activity curtailing the use of such funds will be identified.);

(xi) A statement as to whether subsequent purchases of the same or similar equipment are planned, together with a statement as to the impracticability of consolidation of a portion of the current procurement with the subsequent procurement in the interest of broader competition.

e. When forwarding a D&F under EXCEPTION (15) requesting Secretarial approval to negotiate on the grounds that bid prices received from formal advertising are unreasonable or were not independently reached in open competition, the following information shall be furnished in the Form 2759:

(i) IFB number and date;

(ii) Number of firms furnished IFB's and number which responded, including a list of the firms and respective bids submitted;

(iii) The procuring activity's original estimate of costs and basis for this estimate leading to an affirmative showing of the excessive nature of bid or bids received;

(iv) From the Procurement Plan, list the firms to be solicited.

f. In forwarding the second D&F required under EXCEPTION (15) for secretarial approval, with regard to the particular contract being negotiated, the following shall be included in the Form 2759:

(i) Reference to the previous D&F and date of Secretarial approval;

(ii) Facts pertinent to the rejection of all bids, prior notice of intention to negotiate, and each responsible bidder given opportunity to negotiate in accordance with previous D&F;

(iii) List applicable firms and proposals submitted on basis of Request for Proposal;

(iv) Show conclusively that final negotiated price is lower than all other prices offered on negotiated basis and is lower than all rejected prices on advertised procurement.

g. If EXCEPTION (16) is cited as negotiation authority, the following additional information shall be included:

(i) An affirmative statement of the technical and specialized nature of the item;

(ii) Statement of the current annual requirement and prospective needs for the item;

(iii) Procurement history of the item, including firms which have produced the item and a statement of the complexity and reasons for lack of sources;

(iv) If for maintenance of an existing mobilization base, show that the firm(s) will lose capability of producing the item in the time required under projected mobilization planning if not awarded contract(s). If item is on the Navy Industrial Readiness Planning Program, show established data and indicate time involved to reacquire lost skills;

(v) If for establishment of a new source, indicate hazards of relying on present source(s) and the time required to acquire skills and the capacity necessary to produce. Explain selection of new source if award is to be proprietary, or if competitive, the reasons for choice of firms to be solicited. Also, reasons should be stated for exclusion of any apparently qualified sources, if applicable.

(c) *RAN's Related to Class Determinations and Findings.* The information furnished in a Request for Authority to Negotiate related to a proposed Class Determinations and Findings shall fully support the proposed negotiation authority as to each item covered by the Request for Authority to Negotiate, furnishing, pursuant to § 737.3-306-52, the same information as to each item as would be furnished if the item were covered by an individual RAN and D&F. Such information should generally, particularly where numerous items are included, be presented in tabular form on an enclosure, attachment, or exhibit to the Request for Authority to Negotiate.

(d) *Specific Responsibilities.* (1) *Heads of Contract Divisions and Contracting Officers.* The head of the contract division, purchase division, or equivalent, of the contracting activity (i) shall be generally responsible for the preparation of the Request and proposed D&F, and for decisions discussed in the Request or based on the facts presented therein; and (ii) except as set forth in paragraph (d)(2) of this section, shall sign the Request in the appropriate space. He shall also be responsible for the accuracy of the facts presented in the Request, except those furnished by another requiring activity as provided in paragraph (d)(3) of this section. At the time of entering into a negotiated contract, the contracting officer of the contracting activity will ascertain that the D&F is consistent with the facts presented at the conclusion of negotiations and, if it is not, will promptly initiate action to obtain a revised D&F.

(2) *Head of Procuring Activity and Project Manager.* The Head of the Deputy of the Navy Procuring Activity (as defined in § 1.201), or Deputy

Chief of Staff for Installations and Logistics of the Marine Corps or his "Assistant Deputy Chief of Staff", or SECNAV designated Project Managers under the command or direction of CNM, or CNM designated Project Managers in which the requirement originated shall sign the RAN and include his recommendations whenever:

(i) Exception (11) is proposed as negotiation authority and the estimated amount of the procurement is $1,000,000 or more;

(ii) Exception (12) or (14) is proposed as negotiation authority and

(A) The procurement is to be negotiated with competition and the estimated amount of the procurement is $5,000,000 or more, or

(B) The procurement is to be negotiated without competition and the estimated amount is $1,000,000 or more;

(iii) Exception (13) is proposed as negotiation authority; or

(iv) Exception (16) is proposed as negotiation authority.

(Where purchases subject to this subparagraph are to be made by a contracting officer of the Naval Supply Systems Command, the contracting officer will forward the Request to the Secretary via the Systems Command or Project Manager having technical cognizance of the program for which the purchase is made, for signature of the Commander or Vice Commander of such Systems Command or the Project Manager.)

(3) *Requiring Activity.* Where a contracting activity is to place a contract for requirements originating in another activity, the requiring activity shall furnish the contracting activity with information concerning the requirement, which will enable the contracting activity to prepare the Request and proposed D&F, and shall be responsible for the accuracy of such information.

(4) *Technical Personnel.* (i) In connection with that portion of the Request covering the selection of contractors for research and development, the responsibilities of technical personnel are set forth in § 3.107-6. In the case of production contracts it is the responsibility of technical personnel to furnish adequate information in the procurement request so that the contracting officer will have the facts on which to base a decision and will be able to provide the information required by (a) above. In connection with standardization, technical personnel shall follow the procedures set forth in § 737.3-306-54.

(ii) On the last page of each Request for Authority to Negotiate transmitting the D&F, the following statement should be made and executed by cognizant technical and requirements personnel:

It is certified that the facts and representations under my cognizance which are included in this Request for Authority to Negotiate or Supporting Advance Procurement Plan Number —— and attached Determination and Findings are accurate to the best of my knowledge and belief.

.....	
Technical Cognizance	Requirement Cognizance
.....	
Date	Date

(5) *Mobilization or Industrial Planning Personnel.* When the procurement is for a Preferential Planning List (PPL) item or when the proposed contract is one of several related contracts to be negotiated under exception (14) or (16), personnel responsible for mobilization or industrial planning shall be responsible for furnishing the necessary information on a current basis to the contracting officer.

(6) *Counsel.* It shall be the responsibility of Counsel for the Contracting Activity preparing the Request to review the D&F as to form and legality. Field purchasing activities of the Naval Supply Systems Command without assigned Counsel shall forward the Request with the D&F attached via the Naval Supply Systems Command for such review by counsel for the Naval Supply Systems Command. The Request shall be signed or initialed by the member of the Office of the General Counsel who reviewed the proposed D&F.

(7) *Comptroller.* In connection with that portion of the Request covering the availability and release of funds, exception (10)d(ix) above, it shall be the responsibility of the Comptroller of the requiring activity to furnish the

necessary information on a current basis to the contracting officer.

(e) *Submissions and Distribution of Requests and D&F's.* The original and two copies of both the Request (NAVEXOS 2759) and the D&F to be signed by the Secretary shall be submitted to the Chief of Naval Material (MAT 023). Additional copies of the D&F under exceptions (13) (Standardization) and (16) (Mobilization) shall be prepared by the procuring activity for distribution after receipt of the signed D&F to any other interested procuring activities. The original Request, when approved, and the signed D&F will be returned to the initiating procuring activity. The two copies of each will be retained by the Chief of Naval Material (MAT 023).

(f) Numbering instructions for Requests for Authority to Negotiate are set forth in § 737.1-403-53.

(g) *Coordinated Procurement.* For procedures, see § 737.5-1106-2.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55513, Dec. 21, 1976]

§ 737.3-306-53 Class determinations and findings (CDF's).

(a) *When Authorized.* CDF's are used when obtaining authority to negotiate a number of contracts for the same or related items and the use of separate D&F's would result in a repetition of the same set of facts. CDF's may be approved only when:

(1) The character of the supplies or services is such that they can only be procured by negotiation. Such supplies or services include:

(i) *Standardized items of equipment* which are to be procured in contracts negotiated under exception (13).

(ii) *Research and development programs* which have not reached the evaluation lot or pilot production stage and are to be procured in contracts negotiated under exception (11).

(2) The nature of the equipment is such that it is not only highly "technical and specialized" but the requirement of military urgency or limited numbers of qualified proven producers (in the sense of facilities, investment, continued contractor interest, extensive preparatory time) preclude the use of formal advertising methods now and in the foreseeable future. This usage is generally confined to exceptions (14) and (16). This type of Class D&F requires the maximum in substantiation and is approved only where a fully supported clear case can be presented.

(b) *Secretarial Approval.* Except as provided in paragraph (c) of this section, all CDF's will normally be signed by the Assistant Secretary of the Navy (Installation and Logistics). All requests for CDF's must be signed by the Head or the Deputy Head of the Procuring Activity (including its field activities) or Project manager (see § 737.3-306-52(d)(2)) in which the requirement originated. Contracting Officers are *not* authorized to sign CDFs.

(1) *Limitation.* The authority granted by a CDF may be used to procure only property and services individually identified and justified in the *supporting* RAN (Request for Authority to Negotiate) or approved APP (Advance Procurement Plan). Authority to negotiate for supplies and/or services not individually identified and justified in the *initial* RAN or APP must be requested through submission of a *new or supplemental* RAN or revised APP, accompanied by either:

(i) A proposed new individual or Class Determinations and Findings, or

(ii) A proposed memorandum for signature by the Assistant Secretary of the Navy (I&L) expressly including within the authority of the previously executed CDF the supplies or services covered by the *new or supplemental* RAN or APP.

(c) *Delegation of Authority to Make Certain CDFs.* With respect to Basic Ordering Agreements (BOAs) for the overhaul, repair or modification of existing equipment under Exception (10) (10 U.S.C. 2304(a)(10) and § 3.210 of this title) (see § 737.3-410-2), the authority to make CDFs is delegated to the Commander, Naval Air, Electronics, Sea and Supply Systems Commands; with a power of redelegation to a level no lower than the Director of a purchasing office as defined in § 1.201-24 of this title.

(1) *Limitations.* This authority shall be, in every case, subject to the following express limitations:

(i) Such CDFs shall only support the overhaul, repair or modification of

equipment or weapon systems to be procured on a selected or specific source (sole source) basis through orders placed under BOAs;

(ii) They shall be limited to the overhaul, repair or modification of existing equipment or systems;

(iii) They shall exclude the performance of any research and development effort;

(iv) They shall exclude the procurement of any parts, components or materials not an integral part of the work to be performed;

(v) They shall specifically list the items or equipment upon which the work will be performed, together with the proposed sources for such work;

(2) *Format.* The suggested format incorporating the conditions listed in paragraph (c)(1) of this section is illustrated in § 737.3-210-3.

(3) *Preparation and submission.* (i) A RAN and the CDF shall be prepared in the same manner as they would be for submission to the Assistant Secretary of the Navy (I&L).

(ii) Each such CDF shall be numbered consecutively by the activity.

(iii) One copy of each such CDF, together with the associated RAN, shall be forwarded to the Chief of Naval Material (MAT 023) promptly after execution.

(d) *Reports of Procurements Under CDFs.* (1) Certain procurements require business clearance approval by the Chief of Naval Material (see § 737.1-403-50 for business clearance requirements).

(2) For each procurement not requiring business clearance approval by the Chief of Naval Material, a report after execution shall be made. The Individual Procurement Action Report (DD Form 350) shall be prepared and a copy submitted promptly to the Chief of Naval Material (MAT 022). Item 27 of DD Form 350 shall indicate the following information:

(i) The CDF number, assigned by the Chief of Naval Material, under the authority of which the procurement was negotiated, except as provided in paragraph (c)(3)(ii) of this section;

(ii) The number of concerns initially solicited, additional number of concerns submitting proposals and their respective quotations.

(e) *Content of Request for Authority to Negotiate (RAN) Under CDFs.* (1) In addition to the information specified in § 737.3-306-52, the following shall be included in the Requests for Authority to Negotiate for CDFs:

(i) Insert the word "Class" after the particular exception cited as the negotiation authority;

(ii) State the estimated quantity and dollar value of contracts expected to be negotiated under the proposed CDF; and

(iii) When the CDF covers a proposed standardization of equipment under exception (13), include statements of action taken in conformance with § 737.5-1106-2.

(iv) An activity submitting a proposed CDF shall specifically indicate the Navy procuring activities, including field activities, and other Military Departments which will be assigned responsibility for any procurement under the proposed CDF.

(v) The RAN shall be numbered in the manner prescribed in § 737.1-403-53.

(f) *Distribution of RANs and CDFs.* (1) The minimum number of copies of a RAN and proposed CDF to be submitted to the Chief of Naval Material (MAT 023) shall be as follows:

Negotiation Exception 2304(a)	*Required Copies*
(12), (14), and (16).	Original and three (3) copies of the RAN and proposed CDF.
(11) and (13)	Original and four (4) copies of the RAN and proposed CDF.

(2) After CDF has been approved, the Chief of Naval Material (MAT 023) will:

(i) Assign to the CDF an idenification number preceded by the letters "CDF," except as provided in paragraph (c)(3)(ii) of this section, and

(ii) Return the original and one (1) copy of the RAN and the original and one (1) copy of the approved CDF to the originating activity. (Copies submitted in excess of requirements in paragraph (f)(1) of this section will be returned to the originating activity).

(3) Upon receipt of an approved CDF, the originating activity shall dis-

tribute the following documents to the other Navy procuring and field activities, and other Military Departments which will be assigned responsibility for any procurement under the CDF:

(i) A reproducible copy of the RAN.

(ii) A reproducible copy of the CDF.

(iii) A reproducible copy of other related sigificant documents, including correspondence having the effect of placing limitations or conditions on the use of the CDF.

(g) *Citation of an Approved CDF.* Whenever it is necessary to cite an approved CDF, both the symbol, e.g., NAVORD-10210 and the number, e.g., CDF 57-1 assigned by the Chief of Naval Material (MAT 023), shall be used.

(h) *Period of Effectiveness.* The time period for which a CDF is to be effective shall not exceed one year unless evidence is presented indicating the need for a longer period. For example, (1) CDFs covering a standardized item should cover the period for which the requirements are known or have been calculated; (2) in research and development programs, anticipated progress should govern the length of the period of effectiveness. The period for programs subject to foreseeable change or for multiple contracts under an outstanding requirement should be limited to the period necessary to accomplish the stated purpose of the CDF.

(i) *Extensions of D&Fs.* The continuation of a CDF beyond its effective date requires a *new* RAN (Request for Authority to Negotiate) setting forth the basic need, the actions accomplished under preceding authorized period, a forecast of the expected activity under the CDF, and a new effective period.

(j) *Reviews.* The Contracting Officer should periodically review the continued necessity for use of a CDF particularly in those instances where the effective period extends one year.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55514, Dec. 21, 1976]

§ 737.3-306-54 Additional procedure with respect to determinations and findings under the Standardization Program (§ 3.213).

(a) Sections 5.1106-2(b) and 737.5-1106-2 set forth requirements for determinations and findings under § 3.213 in coordinated procurement.

(b) Within the Department of the Navy, where procurement involving standardization of technical equipment is required by one activity (Requiring Activity) but is to be effected by another activity (Procuring Activity) the Requiring Activity shall (1) prepare and obtain execution of the required D&F (unless a D&F applicable to the program involved has already been executed), (2) include a statement in the requisition that the applicable D&F has been executed, and (3) attach to the requisition two copies of the applicable D&F. The Requiring Activity shall preserve the original D&F and copies of all supporting documents, in accordance with § 3.308. One of the copies of the D&F shall be used by the Procuring Activity to complete its contract files and, in accordance with § 3.307, the other shall be sent to the General Accounting Office with the copy of the contract negotiated and executed thereunder. The Procuring Activity shall inform the Requiring Activity of any adverse circumstances affecting the proposed procurement.

§ 737.3-306-55 Documentation of files for negotiation under EXCEPTION (10).

(See § 3.210.) In connection with D&F's citing EXCEPTION (10) as a justification for negotiation, where the lack of inadequacy of technical data represents a major or contributing reason precluding competition, the official contract file shall contain the same supporting documentation as required for RAN's under § 737.3-306-52(b)(4). In all other cases where EXCEPTION (10) is cited and where competitive procurement is precluded or limited by reasons other than the lack or inadequacy of technical data, the official contract file should set forth the action being taken to develop or increase competition on future procurement of the items or services concerned, or fully explain why action toward that objective would be unavailing and is therefore not being taken. This is aimed at requiring concrete plans and evidence of progress toward removing obstacles to competi-

tion. Business clearance memoranda submitted to the Chief of Naval Material pursuant to § 737.1-403-51 shall be accompanied by or include therein this required information.

§ 737.3-400 Types of contracts.

§ 737.3-408 Letter contracts.

(a) *Authority to contract.* Where, in accordance with § 3.408, it has been determined that a letter contract is a proper contractual instrument, authority to contract shall be obtained from the Chief of Naval Material (MAT 022) in accordance with § 737.1-403-51(b)(2)a(ii) prior to issuance of modification of the letter contract, as applicable.

(b) *Reporting Letter Contract Status.* See § 737.21-103-1.

(c) *Designation of Paying Activity.* Letter contracts shall name the paying activity to be designated in the definitive contract as the paying office for the letter contract. A copy of the letter contract shall be furnished promptly to the paying office named therein.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55514, Dec. 12, 1976]

§ 737.3-409 Indefinite delivery type contracts.

See § 737.1-350-1.

§ 737.3-410 Other types of agreements.

§ 737.3-410-2 Basic ordering agreement.

(a) *General.* (1) Basic Ordering Agreements (BOAs) are normally written to provide for the procurement of authorized supplies and services covering as wide a range as is practicable. However, separate BOAs may be negotiated when it is considered necessary to restrict the use of a BOA to the procurement of specific supplies or services or when it is considered necessary to authorize the Contract Administration Office (CAO) to issue orders. Such BOAs are referred to as specialized BOAs.

(2) Specialized BOAs providing for the placement of orders by the CAO shall contain a provision substantially as follows:

Each order issued hereunder shall cite (insert applicable negotiation authority and class determination and findings (CDF) number), unless earlier suspended or cancelled by notice from the purchasing office. Orders for items not identified in the CDF and basic ordering agreement are considered unauthorized.

(3) The requirement of § 3-410.2(c)(2)(i) of this title for a determination at the time each order is placed that it is impracticable to obtain competition is satisfied when there is a selected or specified source (sole source) CDF.

(4) The Basic Ordering Agreement shall provide a time frame for the furnishing of contractor price quotations for unpriced orders issued. The period should be as short as practicable, usually 30 days, and normally should not exceed 60 days from receipt of the order. When the Contracting Officer, upon notification by the contractor that pricing cannot be established within the specified period, determines that a longer period is necessary, he shall document the contract file indicating the basis for the determination.

[41 FR 55514, Dec. 21, 1976]

§ 737.3-500 Solicitations of proposals and quotations.

§ 737.3-507 Treatment of procurement information.

§ 737.3-507-50 Safekeeping of proposals and quotations.

In all competitive negotiated procurement estimated to be in excess of $10,000, there shall be provided a central locked storage where proposals (or quotations) shall be held unopened (except for the purpose of identification) until after the established date for their receipt.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55514, Dec. 21, 1976]

§ 737.3-700 Negotiated overheated rates.

§ 737.3-705 Procedure.

(a) Contracting officers must obtain the prior written approval of the Head, Coordinated Negotiation Staff (MAT 02D), Headquarters Naval Material Command before—

(1) Including special provisions for the treatment of designated items of costs in cost reimbursement type con-

tracts for which overhead rates are negotiated.

(2) Excluding a cost reimbursement type contract from the operation of a Navy-wide agreement for reimbursement of allowable costs and

(3) Entering into advance understanding of particular items of costs as authorized by § 15.107.

Such approval is not required for provisions making anticipatory costs allowable or to provisions for cost sharing by the contractor. It is recognized that special cost provisions may be desirable from time to time in connection with individual contracts. Accordingly, contracting officers should feel free to request approvals required by this paragraph.

(b) Where only one Navy procuring activity has cost-reimbursement type contracts with a particular contractor involving negotiated overhead rates, the rates shall be negotiated by that activity. If more than one Navy procuring activity is involved, or if either the Army or the Air Force is involved along with one or more Navy procuring activities, the Coordinated Negotiation Staff (MAT 02D) shall be responsible for conducting the negotiation of overhead rates, except where the negotiation is sponsored by another Department in accordance with § 3.706. See § 737.1–405–51(a) for contracting authority of the Head, Coordinated Negotiation Staff. The Head, Coordinated Negotiation Staff (MAT 02D), when responsible for conducting the negotiations, shall arrange a negotiation conference to which shall be invited representatives of the contractor and the procuring activities concerned. If more than one Department or more than one Navy procuring activity is involved, the audit report will be submitted to the Head, Coordinated Negotiation Staff (MAT 02D), with copies to the procuring activity concerned. The audit report may be supplemented, within the Navy, by information from the files of the Headquarters Naval Material Command and the cognizant contracting offices, plus any information available from individual negotiators currently dealing with the contractor and any additional information the contractor may wish or be requested to furnish. On the basis of the audit report and all additional information, the negotiation of rates shall be accomplished as set forth in § 3.705 and this paragraph (b).

(c) Where contracts are completed and Tri-Service overhead rates have not been finalized covering that period(s), the final rates affecting such contracts may be negotiated by the ACO subject to the following:

(1) Physically completed as to performance and all other administrative and technical requirements other than financial; namely, overhead;

(2) The allocable overhead dollars are considered to be not substantial;

(3) Consultation and advice of the DCAA auditor who would then be made aware of the base(s) for settlement;

(4) Applicable period contract costs be included in the base for determining final overhead rates.

§ 737.3–750 Method of interim payment.

Paragraph (e) of the Negotiated Overhead Rates clause (§ 3.704) authorizes two alternative methods of interim payments pending negotiation of final rates: (a) Negotiated provisional rates set forth in the contract Schedule, or (b) billing rates acceptable to the contracting officer or his authorized representative. In the case of contracts with commercial concerns the billing rate method is preferred where only Navy contracts are involved. Under this method, interim payments will be made at billing rates acceptable to the Defense Contract Audit Agency but the billing rates will not be incorporated in an amendment to the contract. This procedure is more easily administered, provides greater flexibility for prompt adjustment to meet changed circumstances during the rate period, and eliminates the necessity of negotiation by procurement personnel. Where the billing rate method is adopted for Navy contracts, the contracts shall provide that interim payments for overhead will be made at billing rates acceptable to the Defense Contract Audit Agency and that, in the event of failure to agree on the specific billing rates to be used in any given period, the contracting

officer and the contractor shall negotiate provisional rates for incorporation into the contract. Where contractors have contracts with more than one Department, the method of interim payment shall be determined by mutual agreement between the contractor and the Departments involved and shall be incorporated in the negotiation report or summary.

§ 737.3-800 Price negotiation policies and techniques.

§ 737.3-803 Type of contract.

(a) When it is proposed to use other than a firm fixed-price type of contract, and the contract is subject to business clearance by the Chief of Naval Material, the Cognizant Auditor shall be requested by the contracting officer to furnish advice as to whether the proposed contractor has an accounting system which lends itself to the satisfactory administration of the particular type of contract or pricing provisions proposed. If placement of the contract is imperative due to a valid urgency, the request to the Cognizant Auditor and the Auditor's reply may be made orally.

(b) The Business Clearance Memorandum submitted to the Chief of Naval Material (MAT022) shall make reference to the advice received from the Auditor concerning the proposed contractor's accounting system. Omission from the Business Clearance of reference to such advice and action thereon will result in automatic return of the Business Clearance without action.

§ 737.3-805 Written and oral discussions.

[41 FR 55514, Dec. 21, 1976]

§ 737.3-805-1 General.

This part provides guidance for the conduct of technical discussions and price negotiations in negotiated procurements.

[41 FR 55514, Dec. 21, 1976]

§ 737.3-805-2 Competitive negotiation.

(a) *Background.* Unrealistically priced contracts have caused budgetary and contract performance problems; underpriced contracts inevitably lead to either (1) disruption of other programs in order to provide the necessary funding, or (2) reduction within the program of efforts needed to ensure an optimal product. These result in widespread present and future cost excesses which are intolerable in an era of increasingly austere budgets. Therefore, it is necessary to ensure that negotiations are conducted in a manner that promotes realism.

(b) *Applicability.* The provisions of this part are applicable to cost type, research and development, and other complex contracts where factors other than price serve as the primary basis for award. In less complex contracts where price is the predominant basis for award, the two-step negotiation procedures described in § 3-805.2 of this title regarding price negotiation will be followed to avoid unnecessary repetition and loss of credibility through the improper use of best and final offers.

(c) *Action.* Contract negotiations will be conducted in accordance with the following:

(1) Technical discussions are intended to ensure that the provisions of the solicitation are clearly understood by offerors and that the government evaluators fully understand the proposals and their strengths and weaknesses in order to adequately discriminate for purposes of source selection. Accordingly, those aspects of proposals which are unclear, improperly substantiated or fail to meet the requirements of the solicitation must be discussed with offerors. All offerors selected for discussions must be afforded adequate opportunity to meet the requirements of the solicitation. However, the strengths, weaknesses, or overall evaluation of any offeror's proposal with respect to the other proposals must not be divulged either directly or indirectly. The conduct of discussions must avoid leveling proposals to the point where the technical discrimination necessary for source selection is destroyed and cost, however, weighted, assumes disproportionate importance. This requires the exercise of sound judgment based upon such factors as the degree of effective competition and the selection criteria given the solicitation.

(2) During the conduct of price negotiations, the need for realism should continually be stressed to offerors. The solicitation criteria and the evaluation of cost proposals should emphasize realism and the proper substantiation of proposed costs. This can be accomplished best by comparison with independent government cost estimates. Offerors must be afforded the opportunity, following discussions, to submit revisions to their proposals. However, to ensure the realism of initial proposals and to avoid the need for successive rounds of best and final offers, offerors should continually be advised that changes to initial proposals made in adjusted offers will be evaluated against the realism criteria and appropriate justification in terms of the discussions and negotiations which have transpired. Under no circumstances will a best and final offer be solicited for purposes of driving offerors to an unreasonably low price or for the sole purpose of attempting to lower an otherwise reasonable price.

(3) The planning and conduct of source selections and negotiations must stress the need for the necessary security to ensure that cost proposals and/or the standings of offerors with respect to cost are not divulged to any person beyond those whose duties require that knowledge. The proper control of negotiations and the achievement of realistic initial cost proposals require that unauthorized disclosures be precluded.

[41 FR 55514, Dec. 21, 1976]

§ 737.3-807 Pricing techniques.

§ 737.3-807-3 Cost or Pricing Data.

(a) *Waiver of Requirement Under 10 U.S.C. 2306(f)* (Pub. L. *87-653*). (1) Pursuant to the authority of 10 U.S.C. 2306(f), the requirement of § 3.807-3(a) with respect to the submission of cost and pricing data and the certification thereto is waived for prime contracts to the Western Electric Company for materials, supplies and services which are standard Bell System items.

(2) The requirement for certification of cost or pricing data for cost-reimbursement-no-fee contracts to nonprofit educational and other nonprofit institutions is also waived, except that, this waiver does not exempt subcontractor certificate requirements. Contracting Officers will require, by appropriate contractual provision, subcontractor compliance with certificate requirements. Furthermore, this waiver applies only to the certification and does not waive the requirements for submission of cost or pricing data under cost-reimbursement-no-fee contracts.

(b) *Effective Date.* The authorization granted in (a) above remains in effect until 30 June 1976.

§ 737.3-807-5 Review and evaluation of subcontractor's proposals by field contract administration offices.

(a) In those instances set forth in § 3.801-5(b)(12) and § 3.807-3(e) (3), (4) or (5) wherein Government assistance is deemed necessary to review subcontractor's cost estimates at the subcontractor's plant, the request to the field contract administration officer shall be accompanied by a copy of the review package accomplished by the prime contractor or higher-tier subcontractor, including:

(1) The subcontractor's proposal; (2) DD Form 633, if used; (3) other related cost and pricing data provided by the subcontractor; and (4) the results of the prime contractor's or higher-tier subcontractor's cost/price analysis. In instances described in § 3.807-3(e)(3) where the above-described data is not available, such data as is available (in-house estimates, price analysis, etc.) shall be provided.

(b) DSA, DCAS Headquarters, Executive Directorate, Contract Administration, Cameron Station, Alexandria, Virginia 22314 should be notified when review and evaluation of subcontractors' proposals:

(1) Will require extensive DCAS assistance in connection with the acquisition of a major new weapon system, or

(2) Required special or expedited action by a DCAS office and such action is being, or has been, delayed excessively.

§ 737.3-807-6 Refusal to provide cost or pricing data.

When under § 3.801-2(c) or § 3.807-6 the contracting officer is required to refer the prospective procurement to higher echelons, he will refer it to the head of the procuring activity concerned. If the problem cannot be resolved at that level, the head of the procuring activity will refer the matter with his comments and recommendations to the Chief of Naval Material (MAT 021). Referral will be made as expeditiously as possible inasmuch as award of the procurement shall be suspended until the matter is resolved. This procedure shall also be followed in cases in which a prime contractor is obligated to furnish cost data relating to negotiated purchases from a subcontractor, and the subcontractor refuses to give access to cost data sufficient to permit price negotiations.

§ 737.3-807-10 Subcontracting considerations in cost analysis.

(a) *Requests for Proposals to Require Information on Purchased Materials.* (1) For purposes of this directive, "purchased materials" means raw materials, purchased parts, components, or end item(s) to be delivered under a contract, which are not fabricated or produced by the contractor.

(2) The need for requiring timely submission by potential and existing contractors or information required by negotiators or other procurement personnel to evaluate properly the purchased materials portion of price quotations is emphasized. This information is necessary particularly when competition is lacking or is inadequate to control the prices initially proposed. The prime categories requiring treatment are:

(i) New procurements in cases involving a sole source or where competition is limited, (ii) repricing of redeterminable and incentive contracts, and (iii) equitable adjustments under the Changes clause and other clauses having similar provisions for such adjustments.

(3) Whenever it is considered desirable to make use of cost analysis in accordance with 3.807-2(c) and the circumstances set forth in paragraph (a)(2) of this section apply, requests for proposals and requests for quotations shall also require the offeror to include the following information in its proposal or quotation with respect to major purchased materials, giving due consideration to both the relative importance of the item and the dollar amount involved:

(i) Principal materials or components to be purchased by the offeror;

(ii) Proposed or established sources, including size classification (large or small business) of each source;

(iii) Proposed method of purchase (whether competitive or other than competitive) and reasons therefor;

(iv) Basis for award; i.e., low bidder or delivery, etc.;

(v) Copies of suppliers' cost breakdowns and any price analysis made by the contractor if noncompetitive;

(vi) Type of pricing arrangement;

(vii) Comparison with invoice prices of prior procurements, if any;

(viii) Organizational relationship, if any, of proposed supplier to offeror; and

(ix) In the circumstance of follow-on orders, an explanation of any changes in "make-or-buy" decisions substantially affecting the proposed price or creating diversification for the contractor at the expense of the Government.

The foregoing information shall also be requested from contractors in connection with the information to be furnished in support of repricing actions and equitable adjustments. In addition, in the case of services required under a contract or proposed contract, which are not to be performed directly by the contractor or the offeror, as the case may be, the foregoing information shall also be required to the extent applicable. All of the information required above must be developed and consolidated by the offeror or contractor in preparing its proposal or quotation, or the material needed to support a repricing action, or a request for an equitable adjustment; accordingly, the furnishing of this information to the Government on a timely basis will add no substantial burden to the offeror or contractor concerned.

(4) Upon receipt of the above information, negotiators shall proceed with evaluations in accordance with principles set forth in § 3.807–10. A brief description of the method of evaluation utilized and sufficient examples to support the conclusions reached are a required part of business clearances. (See § 737.1–403–51(c)).

§ 737.3–807–53 Substantiation of obstacles or residual inventory charges in pricing and repricing actions.

Whenever a contractor submits cost data on DD Form 633–5 (Contract Pricing Proposal (Change Orders)) or DD Form 633–6 (Contract Pricing Proposed (Price Redetermination)), or by any alternate method, in connection with pricing of change orders or repricing of contracts, charges included therein for obsolete or excess residual inventory shall be substantiated by the submission of appropriate schedules listing the inventory involved. If title to such inventory vests in the Government, the inventory shall be treated in accordance with regulations established for contractor inventory.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55515, Dec. 21, 1976]

§ 737.3–807–55 Equitable price reductions for failure to meet contract requirements.

Action shall be taken to negotiate an equitable price reduction pursuant to a guarantee clause, warranty provision, or failure to meet contract specifications, as soon as possible after the nature and extent of the deficiency has been determined, and any partially corrective action authorized by the Contracting Officer has been completed. Delay in negotiation of such reductions to permit concurrent final pricing of the particular contract or other related contracts shall not be allowed generally since such delay, in most instances, serves no useful purpose. Any significant delay in negotiation results in loss of appreciation of the importance of the defect by both parties, particularly after cognizant personnel leave, or are assigned to other work.

§ 737.3–807–56 Consideration of income tax payments in defective pricing adjustments.

Contractor income tax payments shall not be considered nor included in pricing adjustments under the § 7.104–29 "Price Reduction for Defective Cost or Pricing Data" clauses. When the question arises, contractors should be advised to obtain such tax adjustment through the amended income tax return procedure.

§ 737.3–811 Record of price negotiation.

The memorandum required by § 3.811, generally, will be signed only on behalf of the Government. However, whenever it is desirable to have such memorandum verified by the initials of signature of the prospective contractor's negotiator, the following statement shall be included therein:

> This memorandum is a summary of negotiations only and does not constitute a contractual obligation. Nothing set forth herein is binding on either the Government or ————.[1]

§ 737.3–1200 Cost accounting standards.

§ 737.3–1203 Prime contractor disclosure statement(s).

(a) *Determination of Secretary That It Is Impractical To Secure Disclosure Statement(s).* The information needed for the Assistant Secretary of the Navy (Installations and Logistics) to waive contractor submission of a disclosure statement, as authorized under § 3.1203(e), shall be prepared by the Procuring Contracting Officer (PCO). Such information shall be submitted in the form of a draft determination and findings via the Chief of Naval Material (MAT 021). The information shall consist of the following:

(1) A description of the proposed contract, including the contract type, the supplies or services being procured, and the amount of the proposed award;

(2) An unequivocal statement that the proposed contractor refuses to submit a disclosure statement;

[1] Insert name of the other party to the negotiations.

(3) The specific reasons why the proposed contractor refuses to submit a disclosure statement;

(4) The net sum of all awards by the Department of Defense to the proposed contractor during the preceding three fiscal years;

(5) A statement that no other source of the supplies or services being procured is available to satisfy the needs of the activity on a timely basis;

(6) A statement of any alternative methods of fulfilling the project or program needs and the procuring activity's reasons for rejecting such alternatives;

(7) A statement of the steps being taken by the procuring activity to establish other sources of supply for future procurements of the supplies or services being procured;

(8) Any other information that may aid the Secretary in determining that it is impractical to secure the disclosure statement; and

(9) Based on the above findings, a proposed determination that it is impractical to secure a disclosure statement.

§ 737.3–1206 Subcontractor disclosure statements.

(a) Requests for waiver of a subcontractor's disclosure statement shall be submitted in the same form, contain the same information, and be processed in the same manner as set forth in § 737.3–1203(a) of this part.

§ 737.3–1211 Waiver of cost accounting standards, rules, and regulations.

(a) The information required by ASPR Appendix O in support of a request for waiver of the Cost Accounting Standards clause, under the provisions of § 3.1211 shall be submitted by the PCO through chain of command to the Chief of Naval Material (MAT 021). In order to facilitate forwarding to the Cost Accounting Standards Board, via the Assistant Secretary of the Navy (Installations and Logistics) and the Assistant Secretary of Defense (Installations and Logistics), this information shall be included in an enclosure separate from the initiating communication, with paragraphs numbered sequentially in the same order as the requirements. The submission shall also include the estimated date of contract award and justification, if any, for the urgency of award if the estimated date of award is less than sixty (60) days from date of submission.

(b) In the case of procurements to be placed with foreign concerns where a Cost Accounting Standards clause waiver is requested, the following information, over and above that required by paragraph (a) of this section, shall be requested of DCAA (see paragraph (d) of this section):

(1) Any accounting requirements imposed on the foreign concern by the foreign government which are incompatible with the Cost Accounting Standards;

(2) Any accounting requirements imposed on the foreign concern by the foreign government which are sufficiently unique that compliance by the concern with the Cost Accounting Standards would not be feasible; and

(3) The cost impact on U.S. Government contracts with the foreign concern if the Cost Accounting Standards were required to be followed by the concern.

(c) If, on the basis of information developed by DCAA in accordance with paragraph (b) of this section, it appears that a foreign concern could reasonably comply with the CAS clause, the PCO shall renew efforts to obtain its acceptance of the clause. If, despite renewed efforts, the foreign concern's refusal remains adamant, a further written statement of its position shall be obtained which shall discuss in detail each of the DCAA findings and the rationale for the continued refusal.

(d) The information required under paragraph (b) of this section shall be requested by the PCO. In the event such information has previously been obtained, the PCO shall ascertain that it is still current. Requests should be addressed as follows:

(1) *European Area.*

Message:
Branch Manager
European Branch Office, DCAA
Rhein Main 5-0
Rhein Main Air Force Base, Germany

or

Mail:
Branch Manager
European Branch Office, DCAA
APO New York 09057
Copies to:
DCAA
Cameron Station
Attention: ASC
Alexandria, Va. 22314

and

New York Region, DCAA
252 7th Avenue (4th Floor)
New York, N.Y. 10001

(2) *Pacific Area (except Vietnam, Thailand and Malaysia).*

Message:
Branch Manager
Pacific Branch, DCAA
Yokohama, Japan

or

Mail:
Branch Manager
Pacific Branch Office, DCAA
Box D
APO San Francisco 96503
Copies to:
DCAA
Cameron Station
Attention: ASC
Alexandria, Va. 22314

and

San Francisco Region, DCAA
450 Golden Gate Avenue
Box 36116
San Francisco, CA 94102

(3) *Pacific Area (Vietnam, Thailand and Malaysia ONLY).*

Message:
Branch Manager
Saigon Branch Office, DCAA
c/o DIRCON, Box 101
Saigon, Republic of Vietnam

or

Mail:
Branch Manager
Saigon Branch Office, DCAA
c/o DAO-DIRCON-RRVN
Box 101
FPO San Francisco 96626
Copies to:
DCAA
Cameron Station
Attention: ASC
Alexandria, Va. 22314

and

San Francisco Region, DCAA
450 Golden Gate Avenue
Box 36616
San Francisco, CA 94102

§ 737.3-1250 Navy Cost Accounting Standards (Navy-CAS) Board.

(a) A Navy Cost Accounting Standards (Navy-CAS) Board is established to assure uniformity in administering determinations that practices disclosed in disclosure statements are in non-compliance with applicable cost accounting standards, in the case of contractors assigned to the Navy for contract administration (see DOD Directory of Contract Administration Components (DOD 4105.59H)).

(b) In accordance with § 3.1205(c), each determination of non-compliance which cannot be resolved by the cognizant Navy ACO shall be referred to the procuring activity having cognizance of the ACO. If that activity cannot resolve the matter, it shall be referred to the Navy-CAS Board.

(c) The Navy-CAS Board shall review each determination of non-compliance that is referred to it in accordance with paragraph (b) of this section and advise the ACO of its recommendations.

(d) The Navy-CAS Board shall consist of one permanent representative each from: Headquarters, Naval Material Command (MAT02D, Chairman); Headquarters, Naval Air Systems Command; Headquarters, Naval Electronic Systems Command; Headquarters, Naval Ordnance Systems Command; and Headquarters, Naval Ship Systems Command. Each other Navy Command, Office, and Bureau as well as each other department and Government agency, having a substantive interest in a particular noncompliance matter before the Board, shall be invited to have a representative participate, as an *ad hoc* member, in Board proceedings regarding that matter.

90-111 O—82——37

Subpart D—Special Types and Methods of Procurement

§ 737.4–100 Procurement of research and development.

§ 737.4–111 Special use allowance for research facilities required by educational institutions.

(a) Generally a special use allowance for acquisition or construction of research facilities should be limited to that portion of the total acquisition cost of a research facility which is the amount needed for construction in accordance with Government criteria to satisfy the functional requirements of the Government work to be performed at the facility. Any significant balance of cost to meet the special design or other extra requirements of the educational institution should generally be either excluded from allocation to Government contracts or made subject to a normal or lower use allowance as provided in § 4.111(d)(ii).

(b) In addition to other information relevant to consideration a special use allowance as set forth in § 4.111 (c) and (d), requests for approval of a special use allowance should state the total estimated acquisition cost of the proposed facility, the estimated amount or percentage thereof needed in accordance with Government criteria to satisfy the functional requirements for Government work, information as to the comparative need of the Government and the educational institution for the facility, and if more than the amount of percentage of cost needed to satisfy the Government's functional requirements is recommended for special use allowance, the special circumstances justifying such action. Such requests for approval shall be forwarded via the Commander, Naval Facilities Engineering, for review and comment in regard to design, type of construction, adequacy to meet Government requirements and the reasonableness of the estimated total cost and the amount thereof allocable to Government's requirements.

(c) Contracts providing for a special use allowance for acquisitions or construction of research facilities shall specify (1) that plans and specifications and major changes thereto shall be subject to approval by the government; (2) that the work shall be subject to approval by the Government for conformity to approved plans and specifications; and (3) that the Commander, Naval Facilities Engineering, shall be the authorized representative of the sponsoring procuring activity for such purposes.

(d) Except as otherwise directed or authorized in the approval, the contract may also provide for up to a 15 percent increase in the amount subject to the special use allowance to cover changes in the work or any difference between estimated and actual cost of the work. Any such increase may be made subject to the approval of the sponsoring procuring activity. If more than a 15 percent increase is required, the further approval of the Deputy Chief of Naval Material (Logistic Support) shall be required.

§ 737.4–116 Government property under research and development contracts.

§ 737.4–116–4 Transfer of title to equipment to nonprofit educational or research institutions.

(a) Each procuring activity transferring title to equipment in accordance with § 4.116–4 shall furnish a report of such transfer by 30 January each year to the Office of Naval Research (Code 522) under Report Control Symbol DD-I&L(A)-598 (4340). The report shall include the following:

(1) The name and location of each institution to which equipment was transferred during the previous calendar year;

(2) The dollar value (at acquisition cost) of equipment transferred to each institution;

(3) The total dollar value of all such transfers; and

(4) A separate sub-total showing the value of all equipments so transferred having an acquisition cost of less than $200.

§ 737.4–116–50 Transfer of title under research grants.

4–116.50 Transfer of Title Under Research Grants. See SECNAV Instruction 3900.10A and ONR Instruction 3900.10B.

Subpart E—Interdepartmental and Coordinated Procurement

§ 737.5-600 Procurement of printing and related supplies.

§ 737.5-601 Printing and related supplies.

(a) Publications, printing, related equipment, and paper stocks used in procured in accordance with this Subpart; § 737.1-108(b)(vi), NAVSO P-35; § 737.1-201(c) (i), (v) and (vi), Definitions; and § 737.1-454, Responsibilities of the NPPS.

(b) Publications and printing may not be procured as an integral part of a Department of the Navy contract or grant unless authorized by the Congressional Joint Committee on Printing or unless a waiver has been obtained from the Public Printer (Government Printing Office). This does not preclude the procurement of writing, editing, manuscript copy, or illustrative services within a contract or grant; or the inclusion of requirements within a contract for incidental printing, e.g., forms and instructional materials solely for contractor use in responding to the terms of a contract; or the publication of findings by grantees within the terms of their grants, provided that such terms are in accordance with these directives and NAVSO P-35.

(c) Responsibility for initial determination on the necessity for authorizations or waivers, and for dealing with the Congressional Joint Committee on Printing and the Public Printer on matters relating to publications and printing, is vested in the Director, Navy Publications and Printing Service. Components of the Navy Department with requirements for inclusion of publications and printing within a contract or grant shall submit requests for such authorization or waiver through their appropriate publications management organizations. Field requirements shall be submitted in accordance with procedures established by such organizations, to the appropriate Director, Navy Publications and Printing Service Office.

(d) When composition, negatives, or a combination of both will be required within a contract for supplies or services requests for authorization or waiver shall attach a copy of the procurement document (IFB, RFQ, other) provisions specifying that the contractor will be responsible for continuing accuracy and currency of publications content for duration of the contract.

§ 737.5-1100 Coordinated procurement.

§ 737.5-1102 Responsibilities under single procurement.

(a) When the Department of the Navy has received a procurement assignment under the DOD Commodity Assignment Program, the Commander, Naval Supply Systems Command pursuant to authority delegated by the Chief of Naval Material, will assign procurement responsibilities to a particular procuring activity. The procuring activity assigned procurement responsibility shall be responsible for (1) collecting and coordinating the requirements of the Department of the Navy, or the arrangement therefor and (2) submitting to DOD via the Commander, Naval Supply Systems Command implementing procedures developed in compliance with § 5.1103-1.

§ 737.5-2000 Intra-Navy procurement assignments.

§ 737.5-2002 Responsibility of the Naval Supply Systems Command for common-use items listed in the Catalog of Navy Material.

The Naval Supply Systems Command is responsible for the procurement of all common-use items listed in the General Stores Section of the Catalog of Navy Material.

§ 737.5-2003 Utility services.

§ 737.5-2003-1 Contracts for electric power, gas, water, and other utilities.

(a) It shall be the policy of the Department of the Navy to procure public utility services from commercial sources where economically feasible. Such services shall be procured at the lowest cost and on the best terms possible.

(b) The Commander, Naval Facilities Engineering Command shall have cognizance over all matters pertaining to the procurement of public utility serv-

ices and the contracting therefor. Public utility services include, but are not limited to, electricity, gas, water, sewerage, drainage, fire and police protection, street lighting and cleaning, and trash and garbage disposal. Telephone and other wired voice communications are covered by § 737.5-2003-3.

(c) Authority to contract for public utility services shall be obtained by submission of a Business Clearance Memorandum to the Commander, Naval Facilities Engineering Command, in such form as he may prescribe. The Business Clearance Memorandum shall set forth the following information:

(1) Name and location of activity;

(2) Type of public utility service required;

(3) Estimated annual cost and, if available, a billing analysis for the preceding twelve (12) months showing usage and cost factors;

(4) Name and address of contractor;

(5) Copy of contractor's rates, rules, and regulations applicable to the service in question;

(6) A statement concerning the availability of competition;

(7) A requisition citing the appropriation chargeable; and

(8) Such other data pertaining to each type of public utility service as may be prescribed, from time to time, by the Commander, Naval Facilities Engineering Command.

(d) All contracts shall be approved as to legality and form by Counsel for the Naval Facilities Engineering Command Headquarters.

(e) Requests for authority to contract shall be submitted in accordance with procedures established by the Commander, Naval Facilities Engineering Command. These procedures shall be published in NAVSUP Manual, Volume II.

(f) The Commandant, U.S. Marine Corps shall submit to the Commander, Naval Facilities Engineering Command all requests for authority to contract for public utility services required by Marine Corps activities, except that services required by field activities, the annual amount of which does not exceed $2,500, may be procured by the Marine Corps without reference to the Naval Facilities Engineering Command Headquarters.

(g) A copy of each proposed contract for public utility service at any Government-owned facility operated by a Navy contractor, where the cost of such public utility service is to be reimbursed by the Navy, shall be submitted, prior to execution, by the Systems Command concerned to the Commander, Naval Facilities Engineering Command who shall notify the Systems Command concerned of his approval or directions with respect thereto.

(h) The authority herein conferred upon the Commander, Naval Facilities Engineering Command may be redelegated by him.

§ 737.5-2003-2 Utility services for contractor-operated activities at Government-owned facilities.

(a) § 737.5-2003-1(g) sets forth procedures for the review and approval of public utility service contracts at Government-owned, contractor-operated activities whenever the utility charges are reimbursable to the operating contractor. Such utility contracts shall be submitted to the Naval Facilities Engineering Command Headquarters via the cognizant Engineering Field Division as well as via the cognizant Systems Command.

(b) Contracts for the operation of Government-owned facilities by a Navy contractor which call for reimbursement of the contractor's utility expense shall specifically provide for the submission of utility subcontracts to the Naval Facilities Engineering Command Headquarters for comment or approval prior to execution as outlined above.

§ 737.5-2003-3 Telephone facilities and services.

(a) The three Military Departments have a form of joint "General Contract for Communication Facilities and Services," which will be executed with each one of the operating companies of the Bell System. Each such contract will be executed by an authorized corporate officer of the particular operating company and by three contracting officers, one for the

Department of the Army, one for the Department of the Navy, and one for the Department of the Air Force. As a result, each operating company and each Military Department will look to the provisions of only one contract in the area served by each operating company. Each such contract, however, will preserve the flexible and efficient administrative arrangements pursuant to which, in the Department of the Navy, orders for facilities and services under such contracts are placed by Departmental or District officers (Navy and Marine) as appropriate.

(b) There is hereby delegated to the Commander, Naval Facilities Engineering Command and to such other persons as may be designated by him the authority to make and execute on behalf of the Department of the Navy (including the U.S. Marine Corps) all contracts for telephone communication facilities and services to be provided in the United States.

(c) Each such contract shall contain a definition of "Contracting Officers" substantially identical with that set out in the Definitions clause contained in § 7.103-1.

(d) Orders under contracts will be placed by authorized representatives of contracting officers as provided herein. Therefore, under such contracts executed by the Commander, Facilities Engineering Command or by a contracting officer of the Naval Facilities Engineering Command, the following shall be considered, pursuant to the Definitions clause of each contract, an "authorized representative of a Contracting Officer acting within the limits of his authority," for the purpose as specified herein:

(1) The Director of Naval Communications, and all officers and civilian employees designated by him, for the purpose of ordering under contracts any of the following communications facilities and services except those included in paragraph (d)(3) of this section:

(i) Leased teletype lines of the Naval Communication System, flight control and weather reporting, or other private line teletype systems including TWX communication service;

(ii) All leased telephone lines not an integral part of purely local telephone systems; and

(iii) Keying, control and photo-radio leased lines.

(2) All officers and civilian employees designated by the Commander, Naval Facilities Engineering Command, for the purposes of ordering under contracts any of the following communication facilities and services except those included in paragraph (d)(3) of this section:

(i) All facilities and services not included in paragraphs (d)(1) (i), (ii), and (iii) of this section, including but not limited to such items as switchboards, instruments, wiring plans, trunk and tie lines, off-premise mileage, individual telephones, non-recurring charges, service connection charges, termination charges, and telephone toll charges.

(ii) Work, whether or not of an engineering, technical or specialized nature, involved in the design, installation, alteration, repair or maintenance of telephone systems and teletypewriter communication facilities, owned in whole or in part by the Government and under the cognizance of the Navy.

(3) The Commandant of the Marine Corps and such officers and civilian employees as may be designated by the Commandant for the purpose of ordering any communication facilities and services required only by the Marine Corps.

(e) With respect to telephone systems owned in whole or in part by the Government and under the cognizance of the Department of the Navy, the Commander, Naval Facilities Engineering Command has cognizance over the design, installation, alteration, repair or maintenance of such systems by Government personnel or provided for by contracts (and orders thereunder) with contractors rather than companies or organizations regularly providing telephone facilities and services, except that the Commandant of the U.S. Marine Corps has cognizance for such purposes with respect to such systems which are under the cognizance of the U.S. Marine Corps.

(f) Nothing in this § 737.5-2003-3 affects procedures for the budgeting, allotting, or fiscal accounting of funds

appropriate for telephone facilities and services.

§ 737.5–2004 Real estate.

See NAVFAC P–73.

(a) *Acquisition of Title.* See BUDOCKS Instruction 11011.23 transmitting DOD Directive 4165.6.

(b) *Acquisition of Leasehold Interests.* See SECNAV Instruction 11011.17A.

§ 737.5–2005 Automotive, construction, and materials handling equipment.

(a) This § 733.5–2005 assigns responsibilities and establishes basic policies pertaining to all phases of automotive transportation and all types of automotive, construction, and materials handling equipment. It does not cover automotive, construction, and materials handling equipment in war reserve stocks intended for use at advanced bases or in training exercises.

(b) As used throughout this § 737.5–2005, the following terms shall have the meanings set forth below:

(1) *"Automotive vehicles"* means all noncombat, self-propelled vehicles suitable for use on the highway, and all trailers suitable for use in conjunction therewith (It includes trucks, buses, tractors, bus trailers, semi-trailers, all types of passenger vehicles, and all types of power cycles. It does not include bicycles, vehicles designed primarily for use on rails, construction equipment, materials handling equipment, amphibious vehicles, or vehicles (with or without armor) designed for active participation in combat);

(2) *"Construction equipment"* means all mechanical equipment used in the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property (It includes pile drivers, power shovels and cranes, road rollers, tractors, scrapers, plows, derricks, street sweepers, sprinkling carts and the like; and portable boilers, pumps and air compressors. It also includes such stationary machines and mechanical apparatus as rock-crushing plants, concrete batching and mixing plants and the like, used exclusively for work connected with the construction and maintenance of public works);

(3) *"Materials handling equipment"* means all mechanical equipment normally used for materials handling on floors and paved surfaces as fork lift and pallet trucks, warehouse tractors and trailers, stackers, straddle trucks, warehouse cranes, conveyors, and platform trucks; and

(4) *"Specialized types"* includes radio and electronic vans and trucks, ambulances, bomb handling trucks and trailers, aircraft fueling, crash fire and rescue and salvage units and such other specialized types as are developed by the management control bureaus for their specific use.

(c) The Marine Corps shall provide funds for the procurement, and administer the assignment, utilization, and maintenance, of all equipment covered by this NPD which the Marine Corps may require, except for procurement of ambulances. Procurement of Civil Engineer Support Equipment (CESE) and Materials Handling Equipment at Marine Corps Air Stations is the responsibility of the Marine Corps. All other equipment, except equipment peculiar to the Marine Corps, is the responsibility of the Navy.

(d) The Naval Facilities Engineering Command has the following responsibilities for the Navy with respect to automotive vehicles, construction equipment, and standardized automotive components of specialized types (where specifically indicated, these responsibilities apply also to automotive vehicles and construction equipment used by the Marine Corps):

(1) Providing funds for the procurement, and administering the assignment and utilization, of all passenger carrying vehicles in accordance with the military requirements established by the Chief of Naval Operations;

(2) Establishing and promulgating standards for operation and general utilization;

(3) Preparing and promulgating maintenance standards;

(4) Administering public laws relating to:

(i) Commercial type and school bus operations (including Marine Corps);

(ii) Official use of Government-owned and operated motor vehicles including passenger cars (applies to

Marine Corps for field status determinations only); and

(iii) The sale and replacement of used automotive vehicles, construction equipment and specialized types.

(5) Maintaining current and complete files and records for all activities, ashore and afloat;

(6) Assigning registration numbers;

(7) Establishing criteria for replacement and retirement;

(8) Developing and promulgating specifications;

(9) Acting upon procurement requests including those of the Marine Corps, transmitting them to the purchasing activity designated by higher authority;

(10) Establishing standards for qualifications, training, and indoctrination of professional, technical, and supervisory employees concerned with automotive vehicles and construction equipment;

(11) Coordinating requirements and effecting standardization of equipment as practicable;

(12) Through command channels verifying, determining degree of, and assisting in compliance with the technical standards and safety regulations;

(13) Acting as a central clearing agency for the Navy, less the Marine Corps, in exchanging and disposing of automotive and construction equipment; and

(14) Devising standardized cost accounting and reporting requirements in collaboration with the Office of the Comptroller and other interested systems commands and offices.

(e) The Naval Supply Systems Command shall have the responsibilities listed under paragraphs (d) (2), (3), (4)(iii), (5), (6), (7), (8), (9), (10), (11), (13), and (14) of this section, with respect to materials handling equipment.

(f) The Bureau of Medicine and Surgery shall have the responsibilities listed below with respect to ambulances and other specialized types of automotive equipment developed for its specific use at all Navy and Marine Corps activities. Specialized types of automotive equipment under cognizance of the Bureau of Medicine and Surgery include mobile X-ray units, mobile dental units and mobile surgical operating units. The responsibility for these specialized types which are developed for advance base components or combat units will be vested in the Systems Command or Office having responsibility therefor.

(1) Providing funds for the procurement, and administering the assignment and utilization, of all such equipment;

(2) Determining allowance lists and requirements for current and future needs;

(3) Determining what equipment is excess to its needs;

(4) Establishing maintenance and operating procedures for medical and dental equipment contained in specialized types.

(g) The Naval Ship Systems Command shall have the responsibility, in collaboration with each cognizant Systems Command, and Office of the Department of the Navy, for recommending to the Chief of Naval Operations allowances, and changes therein, of automotive vehicles and materials handling equipment for all types of vessels. Such allowances and changes shall become effective upon approval by the Chief of Naval Operations.

(h) Each Systems Command, Bureau and Office of the Department of the Navy shall have the responsibilities listed below with respect to automotive vehicles, construction and materials handling equipment for activities under its management control except as indicated in § 737.5–2005 (d), (e), (f) and (g).

(1) Providing funds for the procurement, and administering the assignment and utilization, of all units except passenger carrying vehicles and ambulances;

(2) Submitting requirements for passenger-carrying vehicles to the Naval Facilities Engineering Command;

(3) Providing funds for maintenance and operation;

(4) Determining requirements for current and future needs;

(5) Establishing allowance lists for all its activities in accordance with the military requirements established by the Chief of Naval Operations;

(6) Determining what equipment is excess to its needs;

(7) Developing and promulgating specifications for specialized types and the specialized components of specialized types;

(8) Establishing operating and utilization procedures for specialized types and maintenance procedures for the specialized components of specialized types.

(i) The Commandants of the Districts, the Chief of Naval Air Training and the Commandant of the Marine Corps have coordination control of automotive transportation matters within their respective commands. These commands, subject to the technical guidance of the Naval Facilities Engineering Command Headquarters, shall also be responsible for coordinating all phases of the Department of the Navy's automotive and construction equipment program, as defined in this NPD, between the activities within their commands and the bureaus and offices of the Department of the Navy; for inspecting shore activities and reporting to the respective management bureaus with appropriate recommendations; for transferring of excess equipment; and for effecting standardization of equipment, as practicable, within their own commands.

(j) The Assistant Secretary of the Navy (I and L) has general direction and supervision of policies, procedures and standards in the field of automotive transportation.

§ 737.5-2100 Services of ships and crafts.

§ 737.5-2101 Services of ships and crafts for other than transportation.

Military Sealift Command (MSC) shall procure or otherwise provide to Navy activities, as requested, the services of ships and crafts for purposes other than transportation such as (a) oceanographic research and survey, including underwater research; (b) cable laying; (c) repair facilities and (d) range instrumentation. Requirements for such services or ships, except those met by ships and crafts organic to the Military Services and those required in the installation phase of a system by the systems contractor, shall be placed upon MSC in a timely manner to permit maximum competition.

§ 737.5-2102 Charter party agreements.

The Oceanographer of the Navy, acting through the contracting facilities of the Office of Naval Research, shall be responsible for Navy charter party agreements wherein Navy-owned oceanographic research ships are leased to research institutions for the performance of contract research.

Subpart F—Foreign Purchase

§ 737.6-100 Buy American Act—supply and service contracts.

§ 737.6-103 Exceptions.

§ 737.6-103-2 Nonavailability in the United States.

(a) Each request for approval to purchase a foreign end product as provided in § 6-103.2(d)(4) shall be submitted to the Chief of Material (MAT 02) in the form of a determination. The determination shall include:

(1) A reference to the Buy American Act (41 U.S.C. 10a-d);

(2) Identification of the contracting activity;

(3) Identification of contractor;

(4) Description of the item being procured;

(5) The unit and quantity;

(6) The unit price and estimated delivery cost of the foreign end product;

(7) The unit price and estimated delivery cost of the unavailable domestic end product;

(8) A brief statement indicating the earliest practicable date the domestic end item can be made available, if not immediately available to meet requirements;

(9) Location of project (for construction only);

(10) A brief statement establishing the necessity for the procurement and indicating considerations which have been given to the feasibility of foregoing the requirement;

(11) A statement establishing the non-availability of any similar or substitute domestic end items, indicating both the required characteristics available only in the foreign end item and the deficiencies of the domestic items; and

(12) A statement describing the relationship of the requirement to the production of any item on the Master Urgency Planning List.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55515, Dec. 21 1976]

§ 737.6–103–5 Canadian supplies.

The following is the Department of the Navy list of Canadian supplies which have been approved by the Secretary of Navy as being of a military character or involved in programs of mutual interest to the United States and Canada as described in § 6.103–5(a):

Group/Class	Description
10	Weapons
1135	Fuzing and Firing Devices, Atomic Ordnance
1190	Specialized Test and Handling Equipment, Atomic Ordnance
12	Fire Control Equipment
13	Ammunition and Explosives
14	Guided Missiles
15	Aircraft; Airframe Structural Components
16	Aircraft Components and Accessories
17	Aircraft Launching, Landing and Ground Handling Equipment
19	Ships, Small Craft, Pontoons, and Floating Docks
20	Ship and Marine Equipment
22	Railway Equipment
23	Motor Vehicles, Trailers, and Cycles
24	Tractors
25	Vehicular Equipment Components
26	Tires and Tubes
28	Engines, Turbines, and Components
29	Engine Accessories
30	Mechanical Power Transmission Equipment
31	Bearings
34	Metalworking Machinery
3695	Miscellaneous Special Industry Machinery
39	Materials Handling Equipment
4010	Chain and Wire Rope
41	Refrigeration and Air Conditioning Equipment
4210	Fire Fighting Equipment
4240	Safety and Rescue Equipment
43	Pumps and Compressors
4410	Industrial Boilers
4420	Heat Exchangers and Steam Condensers
4470	Nuclear Reactors
4520	Space Heating Equipment and Domestic Water Heaters
46	Water Purification and Sewage Treatment Equipment
47	Pipe, Tubing, Hose and Fittings
48	Valves
49	Maintenance and Repair Shop Equipment
5220	Inspection Gages
53 (except 5345 and 5350)	Hardware
54 (except 5440).	Prefabricated Structures
55 (except 5520).	Lumber, Plywood, and Veneer
58	Communication Equipment
59	Electrical and Electronic Equipment Components
61	Electric Wire, and Power Distribution Equipment
6210	Indoor and Outdoor Electric Lighting Fixtures
6220	Electric Vehicular Lights and Fixtures.
6320	Shipboard Alarm and Signal Systems
6340	Aircraft Alarm and Signal Systems
66	Instruments and Laboratory Equipment
67 (except 6750).	Photographic Equipment
68	Chemicals and Chemical Products
69	Training Aids and Devices
70	General Purpose Automatic Data Processing Equipment
7610	Books and Pamphlets
7650	Drawings and Specifications
80 (except 8020).	Paints, Sealers, and Adhesives
8120	Gas Cylinders
8140	Ammunition Boxes, Packages, and Special Containers
*8305	Textile Fabrics
*8405	Outerwear, Men's
*8410	Outerwear, Women's
*8415	Clothing, Special Purpose
8470	Armor, Personal
9320	Rubber Fabricated Materials
9330	Plastics Fabricated Materials
9350	Refractories and Fire Surfacing Materials
95	Metal Bars, Sheets, and Shapes
96	Ores, Minerals, and Their Primary Products

*Subject to § 6.304–1 and § 737.6–304–1

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55515, Dec. 21, 1976]

§ 737.6–104 Procedures.

§ 737.6–104–4 Evaluation of bids and proposals.

(a) *Procedure for Submission to Secretary.* Proposed awards submitted for Secretarial decision shall be submitted via the Chief of Naval Material (MAT 0212) with (1) a recommendation supported by relevant facts, including the amount of applicable duty as verified by the Bureau of Customs, and (2) one copy each of the bids or offers to be considered, and (3) an abstract of bids. To ensure that the Navy in no case buys domestic or foreign end products when they are available from Defense inventories, the requirement shall be carefully screened against Department of Defense excess and surplus materials before submission of the proposed award to the Secretary. The results of such screening shall be reported in the

statement of facts. Appropriate provision should be made for extending the date of acceptance of bids or offers to permit sufficient time for orderly transmission and Secretarial consideration.

§ 737.6–104–6 Contract administration.

Any discovery that in the performance of a contract there has been a failure to comply with the provisions of the Buy American Act clause (§ 6.104–5) shall be reported immediately with the name of the contractor, to the Chief of Naval Material. (MAT 024).

§ 737.6–200 Buy American Act—construction contracts.

§ 737.6–203 Exceptions.

§ 737.6–203–1 Nonavailability in the United States.

Each request for approval to purchase a nondomestic construction material on the basis of "nonavailability" as provided in § 18–508.1(b)(1) of this title shall be submitted to the Chief of Material (MAT 02) in the manner, and subject to the requirements, pescribed in § 737.6–103.2

[41 FR 55515, Dec. 21, 1976]

§ 737.6–203–2 Evaluation of bids and proposals.

(a) Proposed awards requiring a determination in accordance with § 18–508.1 and § 18–508.2 of this title shall be submitted to the Chief of Naval Material (MAT 02) and shall contain the following information:

(1) Description of the materials, including unit and quantity;

(2) Estimated cost;

(3) Location of the construction project;

(4) Name and address of the proposed contractor; and

(5) Detailed justification of the impracticability of using domestic materials.

[41 FR 55515, Dec. 21, 1976]

§ 737.6–300 Appropriation Act restrictions on procurement of foreign supplies.

§ 737.6–304 Procedures.

§ 737.6–304–1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, items containing mohair or cotton, or specialty metals.

(a) Request for a Secretarial determination that supplies identified in § 6.304–1 (that are not listed in § 6.105) cannot be procured as and when needed at United States market prices will be forwarded to the Secretary of the Navy via the Chief of Naval Material (MAT 021); except that requests for determinations for specialty metals may be granted by the Head of the Procuring Activity if the total cost of the procurement is not in excess of $1,000,000 and by the Deputy Chief of Naval Material (Procurement and Production) if the total cost of the procurement is in excess of $1,000,000. Request for a determination shall contain the following information:

(1) Description of item or items, including unit and quantity;

(2) Estimated cost;

(3) Country of origin;

(4) Name and address of proposed contractor;

(5) Statement as to necessity for procurement; and

(6) Basis for determination of unreasonableness of domestic prices.

§ 737.6–400 Purchases from Soviet-controlled areas.

§ 737.6–402 Exceptions.

(a) Determinations made by contracting offices under § 6.402(b)(i) (for purchases not exceeding $2,500) shall be reduced to writing and made a part of the appropriate contract file.

(b) Where Secretarial approval is required by § 6.402(b)(ii) (for purchases exceeding $2,500), requests for approval shall be forwarded to the Secretary of the Navy via the Chief of Naval Material (MAT 021) and shall contain full justification, with all pertinent details, for effecting the proposed procurement from a source within a Soviet-controlled area.

§ 737.6-500 Canadian purchases.

§ 737.6-503 Agreement with Department of Defense Production (Canada).

(a) The agreement with the Canadian Commercial Corporation dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961 and 15 October 1962, shall be incorporated by reference in contracts placed with that Corporation.

(b) *Waiver of Requirement Under 10 U.S.C. 2306(f) (Pub. L. 87-653).* Pursuant to the requirement of § 3.807-3(a) with respect to the submission of cost or pricing data and the certification thereto is waived for contract awards made to the Canadian Commercial Corporation until 30 June 1976.

§ 737.6-600 Duty and customs.

§ 737.6-603 Emergency purchases of war materials abroad.

§ 737.6-603-4 Custom entries and duty-free certificates.

(a) Where the shipment will enter the United States at the Port of New York, the contracting officer shall instruct the contractor or the subcontractor, as the case may be, to forward a copy of the shipping document (in addition to the memorandum copy forwarded to the designated Government representative) to the District Director of Customs at the port of entry. If the shipment moves on a Government bill of lading, sufficient copies of the shipping documents will be furnished to the contractor or subcontractor for this purpose.

(b) Commercial customs brokers, who act as agents on a fee basis for private importers, are not authorized to act as agents for the Government, and appropriations are not available for the payment of custom broker's fees. Any request by a broker for compensation or duty-free entry certificate shall be forwarded immediately, with all pertinent information available, to the Chief of Naval Material.

§ 737.6-603-5 Immediate release permits.

The Chief of Naval Material shall have the sole responsibility and authority within the Navy to issue immediate release permits.

§ 737.6-700 Military assistance program procurements.

§ 737.6-702 Determinations and approvals.

(a) Procurement of items for the Military Assistance Program which are based on the exception in § 6.702(a)(i) shall be made only if the procurement is approved by:

(1) The Deputy Chief of Naval Material (Procurement and Production) if the procurement is estimated to exceed $10,000;

(2) The head of the procuring activity or his immediate deputy, if the amount is estimated not to exceed $10,000;

(3) The principal staff office within the procuring activity concerned, if the amount involved is estimated not to exceed $1,000.

(b) Before granting such approval, or making such a determination, the approving authority shall consider the feasibility of foregoing the requirement or providing a U.S. substitute.

§ 737.6-705 U.S./Australian Offset Agreement under the Foreign Military Sales (FMS) program.

§ 737.6-705-1 General.

As a result of discussions between U.S. Department of Defense and Australian Department of Defence, the U.S. has agreed to a combined industry and DOD offset objective of twenty-five percent (25%) of the value of major Australian orders for U.S. military equipment. Major orders have been defined as those of at least $500,000 in value. A blanket type offset not keyed to specifically identified foreign military sales is rather unique. Satisfying this offset objective will be a long range proposition (within a five-year period after the first delivery under the FMS order). Over this period, a variety of different means to accomplish the offset objective will be considered. *However, U.S. contractors benefitting from the Australian FMS actions have the primary responsibility of satisfying the offset requirement.*

§ 737.6-705-2 Background.

The Australian Department of Defence has indicated that, in advance of FMS actions, the U.S. firm expected to perform the contract will be contacted with a view to making arrangements for that U.S. firm to subcontract from Australian sources. FMS actions indicated on DD Form 1513 shall refer to these arrangements. However, if there is no identification or reference to such arrangements, action shall be taken to determine if there are such arrangements and if not, the Australian Department of Defence shall be queried as to whether they intend to undertake such an effort. Each major FMS action will have to be examined carefully to determine exactly what arrangements the Australian Department of Defence has concluded. It is anticipated that these arrangements will represent component purchases from Australian sources for inclusion in the defense system being purchased by the Australian Department of Defence.

§ 737.6-705-3 Contract clause.

A provision is clearly desirable in the contract that U.S. contractors benefitting substantially from the Australian FMS order will be expected to try to meet the offset objective. The provision would have a two-fold objective:

(a) To specifically place upon the U.S. contractor the responsibility for attempting to meet the offset and (b) to provide a requirement for reporting its efforts to achieve this objective. The substance of the following provision shall therefore be included in each FMS contract exceeding $100,000 (unless it is clearly not feasible) where offset procurement from Australia is appropriate:

OFFSET PROCUREMENT

(1) The contractor recognizes that it has responsibility upon receipt of this contract to solicit to the maximum extent practicable in Australia for a minimum of (*percentage*) or (dollar value award). This is in accord with arrangements between the contractor and Australia.

(2) The contractor will report quarterly the following information to the contracting officer:

(1) Solicitations offered to Australian industry (item and value).

(2) Subcontracts or orders placed in Australia (item and value).

(3) Status of delivery under subcontracts or orders placed in Australia.

(4) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for further subcontracting.

In utilization of the above clause, the percentage to be stated or the value designated should not be less than twenty-five percent (25%) of the contract value. A larger percentage may be indicated where the contractor has agreed with the Australian Department of Defence to place more than twenty-five percent (25%) of the contract value with the Australian sources. Obviously, where such arrangements between Australia and the specific U.S. contractor have not occurred, there will be considerable difficulty in achieving the DOD offset objective. The contractor should clearly understand that he has a responsibility to attempt to achieve this offset objective.

§ 737.6-706 Determination of contractor responsibility for the purpose of Foreign Military Sales (FMS) contracts.

(a) *Background.* Under the Foreign Military Sales Act, the United States may enter into contracts for the procurement of defense articles or defense services for sale to friendly foreign countries. In awarding contracts for FMS requirements, the United States, as in satisfying its own requirements, must assure itself that the contractor is responsible and has the wherewithal to meet its contractual commitment. There may be serious diplomatic and military consequences when a contractor fails to perform an FMS contract in accordance with its terms. In view of the importance of the timely delivery of a quality FMS item, within cost, the cognizant contracting officer must, in making a determination of responsibility under § 1-904 of this title, have every assurance that the contractor will in fact perform as he promises.

(b) *Action.* (1) Under § 1-903.3 of this title, special standards of responsibility may be developed when necessary to ensure adequate contract per-

formance. The use of such standards, as may be appropriate, is encouraged with respect to FMS contracts. Any special criteria shall be set forth in the solicitation. In adition, the solicitation shall inform the offerors that due to the nature of the procurement all doubts as to responsibility shall be resolved against the offeror.

(2) When a Foreign Military Sales (FMS) contract requires that a product be obtained from a particular firm, the Navy procuring activities shall advise the foreign government of any contractor deficiencies that may adversely affect contract performance. In such event, a recommendation shall be made either to forego the requirment or provide a qualified United States contractor substitute.

[41 FR 55515, Dec. 21, 1976]

§ 737.6-800 Balance of Payments Program—offshore procurement.

§ 737.6-805-2 Procurement limitations.

Pursuant to the provisions of § 6.805-2(b)(1), authority to make the determinations required by § 6.805.2(a)(v) and (xi) for procurements estimated not to exceed $100,000 is delegated by the Chief of Naval Material to the following individuals:

Chief of Naval Research
Chief, Bureau of Medicine and Surgery
Chief of Naval Personnel
Oceanographer of the Navy
Commander, Naval Air Systems Command
Commander, Naval Electronics Systems Command
Commander, Naval Sea Systems Command
Commander, Naval Supply Systems Command

§ 737.6-805-5 Use of excess United States-owned foreign currencies for payment of contracts in foreign countries.

(a) DOD Directive 5100.29 directed the military services to implement the policy of utilizing U.S.-owned foreign currencies for payment of contracts in foreign countries. The Secretary of the Navy has designated the Navy Comptroller as responsible for preparing the consolidated Navy report required by the DOD Directive. The NAVCOMPT has issued paragraph 046404 of the Navy Comptroller's Manual directing disbursing officers to forward reports to the Navy Comptroller.

(b) Contracting officers negotiating contracts for supplies or services in Excess or Near-Excess Currency countries as set forth in NAVCOMPT Manual 042552-2d will become familiar with the general policy of utilizing U.S.-owned foreign excess and near-excess currencies. When the Contracting Officer determines in accordance with the criteria set forth below that it is not feasible to utilize available excess or near-excess currencies he will execute the certificate set forth below. This certificate will be made a part of the contract file. One copy of this certificate will be forwarded to the designated paying office. The certificate will read as follows:

CONTRACT CERTIFICATION

I hereby certify, as required pursuant to Department of Defense Directive 5100.29, dated October 22, 1965, and under the authority delegated to me, that it was not feasible to make payment from foreign currency owned by the United States Government under this contract in the country of ———— in the amount of $—— for the reason stated below:

(Cite the criterion applicable in the instant case)

Signature

_____

(Name and title of person executing this certification)

CRITERIA

The following criteria shall be used in determining that payment of certain contracts in foreign currencies is not feasible.

1. The Treasury Department is not holding excess or near-excess foreign currencies in the country involved.

2. The contract is awarded in a foreign country where, to the extent provided by a treaty or Executive Agreement, or local laws, payments are required to be made in U.S. currency.

3. The contract provides for payment in U.S. currency to the extent necessary to cover contractors validated direct U.S. currency costs of the United States export content of the procurement involved.

4. The contract does not exceed $500.

5. The contract does not exceed $10,000 and is for a need which is compelling and of such unusual urgency that serious injury to the U.S. Government would likely be in-

curred if payment in foreign currency were to be insisted upon.

6. Evaluation of the contract proposals has resulted in the determination that payment in foreign currency would increase the costs to the U.S. Government or to DOD appropriations.

§ 737.6-900 Government-to-Government agreements and coordination with overseas commands.

§ 737.6-902 U.S./Australian Contract Administration Services Agreement.

(a) The U.S./Australian Contract Administration Services Agreement of 17 March 1973 provides for the administration of Department of Defense contracts by the Australian Government where performance of contract administration services in Australia is required. The Agreement sets forth the following:

UNITED STATES-AUSTRALIA

AUSTRALIAN CONTRACT ADMINISTRATION PROCEDURE

Definition. Contract administration encompasses all those necessary actions to be accomplished in the field, for the benefit of the U.S. DOD purchasing office, which are necessary to the performance of the contract or in support of the purchasing office.

Purpose. In general, contract administration includes the following matters:

i. Be responsible for assuring compliance with the terms of the contract;

ii. Serve as a focal point regarding status of delivery, production, quality of material and other pertinent matters;

iii. Advise the U.S. DOD purchasing office, as appropriate, on all pertinent matters related to the administration of the contract.

Procedure. The U.S. DOD purchasing office issuing a contract may request performance of contract administration in Australia. Requests for contract administration shall be directed to the Australian Government, Department of Supply, Attention Assistant Secretary of Sales and Aid Branch, Canberra ACT 2600 Australia, with a copy of each request forwarded to Chief. U.S. DOD Procurement Information Office (PIO), c/o Department of Supply, Constitution Avenue, Canberra ACT 2600 Australia. Each request shall be accompanied by a copy of the contract and will indicate the specific matters of contract administration the U.S. DOD purchasing officer desires to be performed.

Scope. Normally, the following contract administration functions will be performed by the Department of Supply at the request of the U.S. DOD purchasing office:

i. Review and evaluate contractor's price proposals.

ii. Monitor contractor's financial condition so as to assure contract performance is not jeopardized.

iii. Perform production surveillance and report potential slippages in contract delivery schedules.

iv. Assure contractor's compliance with all Australian laws that may affect its performance under the contract.

v. Perform transportation management as necessary.

vi. Review and evaluate preservation, packaging and packing to assure adequate protection to present damage in transit.

vii. Review contractor's engineering as it affects contract performance.

viii. Assist in settlement of terminations for convenience.

ix. Provide oversight function to assure contractor accountability for U.S. Government furnished property.

x. Review and effect changes as necessary to assure plant safety and security.

xi. Perform such other contract administration functions as may be requested and which are within the contract administration functions of the Department of Supply.

xii. Maintain liaison with the U.S. DOD purchasing office and advise as necessary on any matters including those listed above that may affect performance under the contract.

DEPARTMENT OF SUPPLY PROCEDURE. A contract approving officer of the Department of Supply will be responsible for carrying out the contract administration functions described in paragraphs above titled Procedure and Scope. He may call upon other representatives of the Department of Supply possessing special skills or because of their geographic location to assist him in performing contract administration. It will be his responsibility to immediately advise the U.S. DOD purchasing office of any matter that may adversely affect contract performance. For this purpose, it will be his decision whether such advice shall be transoceanic telephone, by telegraphic communication, or by letter.

The U.S. DOD purchasing office may provide U.S. personnel to perform, participate or assist in contract administration. This normally would occur only where the supply or service required by the contract is of such sensitive or critical nature that first hand observation and participation by U.S. personnel is essential.

§ 737.6-903 Coordination with overseas commands and activities procurements in Europe.

(a) The Naval Regional Procurement Office, Naples, serves as an area and centralized buying activity for naval activities in Europe, Africa, Iceland, and Middle East, operating forces in European waters, for all activities when purchase is effected in Europe; and such other area activities and operating forces as may be required. The Defense Contract Audit Agency, New York Branch, provides cost and audit information and support.

(b) Naval activities having requirements that can be satisfied only by European sources will normally forward their requisitions to the Naval Regional Procurement Office, Naples. This does not relieve such activities from complying with current Balance of Payments directives.

(c) *Exceptions.* The following does not apply to paragraphs (a) and (b) of this section:

(1) Procurement of complete vessels or aircraft.

(2) Procurement of equipment requiring servicing by representatives of foreign companies.

(3) Procurements within an activity's authorized purchase authority when material is readily available overseas (outside CONUS).

(4) Procurements of aviation support items.

(5) Other specific exceptions as may be granted by the Naval Supply Systems Command.

(d) Contracting Officers utilizing any of the above exceptions will:

(1) Ascertain the existence and application of any Government-to-Government agreements and, subject to the provisions of § 1.109-4 regarding conflicts with ASPR provisions based on requirements of law, shall comply with such agreements.

(2) Prior to commencement of negotiations with a United Kingdom supplier, contact the Naval Regional Procurement Office, Naples, Contract Administration Branch, London, England, for (i) a determination of whether the proposed supplier holds any U.S. furnished tooling, (ii) for advice as to the procedures to assure that no rental charges payable to Her Majesty's Government will be included in price charged, and (iii) for information relating to the elimination of research and development charges on certain British manufactured products.

§ 737.6-1000 Exemption of certain contracts with foreign contractors from the requirement for an examination of records clause.

§ 737.6-1001 Statutory Requirements.

The report required by § 6.1001(b) of determinations under § 6.1001(a)(ii) shall be prepared by the Chief of Naval Material (MAT 021) and submitted for Secretarial signature.

§ 737.6-1003 Requests for determinations and findings.

Requests for determinations and findings under § 6.1001(a) shall be submitted through normal procurement channels to the Chief of Naval Material (MAT 021) for processing.

§ 737.6-1100 Use of United States owned foreign currency for payment of contracts.

§ 737.6-1106 Awards.

§ 737.6-1106-3 Awards requiring approval by higher authority.

(a) The appropriate official in the Department of the Navy to whom proposed procurements shall be referred as required by § 6.1106-3 is the Comptroller of the Navy (NCB-133). Such referral shall be direct from the contracting officer and shall contain the information required by § 6.1106-3.

Subpart G—Contract Clauses

§ 737.7-100 Clauses for fixed-price supply contracts.

§ 737.7-104 Clauses to be used when applicable.

§ 737.7-104-1 Equitable adjustments covering material and energy-related shortages.

(a) *Discussion.* The current material and energy-related shortage conditions introduce additional risk factors and contingencies into on-going current procurement negotiations. In

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order to eliminate or substantially reduce certain of these contingencies which are near-term in nature and which can be specifically identified as to type prior to contract award (or prior to definitization of contract prices), it will be necessary and prudent to provide protection covering such specific near-term contingency(s) in lieu of accepting contingencies in contract pricing therefor.

(b) *Policy.* The clause as prescribed in paragraph (c) of this section may be used in Navy fixed-price-type contracts (including both FFP and FPI). The contractor's certificate as to contract price contingencies shall be made part of the contract file. Use of the clause is also encouraged in contracts with small business concerns.

(c) *Clause.*

EQUITABLE ADJUSTMENT CLAUSE

(MATERIAL AND ENERGY-RELATED SHORTAGES)

a. The prices agreed to under this contract contain no provision for the certain specific contingencies specified in subparagraph b. below. The contractor represents that these contingent items represent near-term financial exposures under this contract for which provision was requested in contract prices negotiated under this contract. In lieu of such provision, the Contracting officer agrees that, in the event the specific contingencies outlined in subparagraph b. below occur, the prices under this contract will be equitably adjusted.

b. The following specific contingencies are identified:

c. The contractor shall notify the Contracting Officer within thirty (30) days of the occurrence of the above contingencies. Such notice shall include (i) the Contractor's proposal for equitable adjustment in the contract prices and (ii) support data, demonstrating the actual occurrence of the identified contingencies in such form as the Contracting Officer may require.

d. The aggregate of the increases in the contract prices made under this clause shall not exceed $————.

e. The price equitable adjustment shall not include material handling charges, overhead, general and administrative expenses, and profit.

[41 FR 55515, Dec. 21, 1976]

§ 737.7-104-11 Excess profit.

With respect to § 7.104-11(c), see § 737.33-201.

§ 737.7-104-501 Progress payments.

The clause set forth below is authorized for use in fixed-price supply contracts where progress payments on the basis of completion of the contract are permitted by § 30.5 (see in particular paragraph 501).

(a) *Progress Payments (Oct. 1963).* Payments of the contract price shall be made as follows:

(1) Seventy-five percent (75 percent) (percentage may be varied by the procuring activity) of the contract price shall be paid as progress payments in accordance with the provisions of this paragraph 1. The Contractor, from time to time as the work progresses, but not more frequently than once a week, may submit invoices to the Field Contract Administrator for certification by him as to the percentage of completion of performance of the entire contract. The amount of each such invoice shall be that percentage of the total contract price equal to the percentage of completion of the contract, as so certified by the Field Contract Administrator, such sum to be less any amounts previously billed for progress payments. Progress payments shall be made to the Contractor of seventy-five percent (75 percent) of the net amount of each invoice so submitted and certified. If upon delivery and acceptance of all supplies called for by this contract, seventy-five percent (75 percent) of the total contract price has not been paid under this paragraph 1, any balance of such seventy-five percent (75 percent) shall be paid upon submission of a properly certified invoice.

(2) Twenty-five percent (25 percent) of the contract price of each item shall be paid upon delivery and acceptance thereof upon the submission of properly certified invoices showing the items delivered, the contract price of each, and the statement "twenty-five percent (25 percent) due upon delivery."

(b) Any and all progress payments made hereunder shall be secured, when made, by a lien in favor of the Government upon the supplies contracted for on account of all payments so made and on all material and other property acquired for or allocated to

the performance of this contract (except to the extent that the Government, by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property) as against other creditors of the Contractor. If such property is not identified by marking or segregation, the Government shall be deemed to have a lien upon a proportionate part of any mass of property with which such property is commingled. Any lien provided for by virtue of this clause is paramount to all other liens under the provisions of 10 U.S.C. 7521.

(c) The Contractor, to the extent determined necessary and practicable by the Field Contract Administrator, shall identify by marking or segregation of all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. In any event, the Contractor shall maintain adequate accounting control over such property on its books and records.

(d) In the event that the Contractor shall procure or maintain insurance upon any materials or other property upon which a lien exists in favor of the Government pursuant to the terms of this contract, the policy or policies shall contain a loss payable clause making losses payable to the Secretary of the Navy on order. Any payments hereunder shall inure to the benefit of the Government to the extent of any loss suffered by the Government and to the Contractor as to any remaining balance. The foregoing provisions shall not be deemed to require that the Contractor procure or maintain any such insurance.

(e) The clause of this contract entitled "Payments" is hereby superseded and deleted.

§ 737.7-104-502 Invoicing instructions for multiple destinations.

(a) Generally, a separate billing for each destination is required by disbursing officers to facilitate abstracting public vouchers to receiving activities. Since invoicing instructions that accompany contracts and orders do not clearly state that a bill shall cover supplies designated for one destination only, the following provisions shall be incorporated in the appropriate purchase document as provided below when more than one receiving activity is involved:

(1) Invitation for Bids and Request for Proposals (Standard Form 33): In connection with Paragraph 13 of the Terms and Conditions entitled "Seller Invoices," a separate invoice shall be prepared and submitted in quadruplicate for each activity designated to receive supplies or services.

(2) Negotiated contracts and orders: A separate invoice shall be prepared and submitted in quadruplicate for each activity designated to receive the supplies or services.

(b) In cases where (1) inspection and acceptance are at contractor's plant, and (2) the contractor's costs for individual billing to multiple destinations are considered disproportionate to the cost of the material to be delivered, the contracting officer may deviate from this policy enunciated herein by authorizing a consolidation of invoices at the election of the contractor. In such instances, the contracting officer shall substitute the following clauses in lieu of the clauses prescribed in paragraph (a) of this section:

(i) Invitation for Bids and Request for Proposals (Standard Form 33): In connection with Paragraph 13 of the Terms and Conditions, entitled "Sellers Invoices," the contractor may elect to prepare and submit his invoices in either of the following ways: (*a*) A separate invoice in quadruplicate for each activity designated to receive the supplies or services; or (*b*) consolidated invoice in quadruplicate covering all shipments delivered hereunder.

(ii) Negotiated contracts and orders: The contractor may elect to prepare and submit his invoices in either or two ways: (*a*) A separate invoice in quadruplicate for each activity designated to receive the supplies and services; or (*b*) a consolidated invoice in quadruplicate covering all shipments delivered hereunder.

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§ 737.7–104–504 Certificate of conference option clause.

The following clause is approved for use in fixed-price supply type contracts, and to the extent applicable to other type contracts, which provide for source inspection under conditions specified in § 14.306(c).

(a) Certificate of Conformance Option (November 1963) At the option of the Government, to be exercised by the authorized representative of the cognizant inspector, the contractor may be required to deliver any or all of the supplies to be furnished under this contract without prior Government inspection and to furnish in lieu of such prior Government inspection a Certificate of Conformance Statement to be attached to, or included on, all copies of the applicable Materiel Inspection and Receiving Report, DD Form 250. One copy of the statement shall be signed by the contractor. The statement shall read substantially as follows:

I hereby certify that on ————, 197—, the ———————— (Company name) shipped supplies called for by contract number —— via ———— on ———————— (bill of lading or other shipping document identification), in accordance with applicable requirements for shipment.

I further certify and the contractor warrants that such supplies are of the quality specified in the contract (including any applicable specification) and in the quantity shown in the applicable Materiel-Inspection-Report (DD Form 250).

Name ————————
Title ————————
Firm ————————

————————
(Date of Execution)

NOTE: 18 U.S.C. 1001 prescribes criminal penalties for making false representations to the Government.

(b) Notwithstanding any provision of the certificate referred to above, and notwithstanding any provision of the clause herein entitled (insert title of inspection clause), the Government shall have a reasonable time after receipt of the supplies by the Government within which to inspect them. If there are shortages in quantity or defects in material or workmanship, the Government shall so notify the contractor who shall, with all possible speed, correct or replace the short or defective supplies. If this contains a "Guaranty" clause, as to any conflicts between this paragraph (b) and the "Guaranty" clause, the "Guaranty" clause shall govern.

§ 737.7–104–505 Total system responsibility.

(a) *General.* In certain instances where end item specifications have been originated by a contractor, or the contractor has agreed to be responsible for the feasibility, accuracy, sufficiency and validity of such specifications, the contractor should assume the risk that end items to be procured will meet or exceed the specified performance requirements. Such instances include, for example.

(1) Where the contractor generates or develops specifications prescribing both performance requirements which an end item must meet as well as the details of the design and fabrication of the end item; or

(2) Where a contractor reviews, refines and substantially revises Government specifications of such end items; or

(3) Where a contractor has had an adequate opportunity to review and to modify Government-originated specifications for such end items and the contractor has agreed or will agree to adopt the specifications as its own;

and where in any of the three foregoing situations the Government, after such generation, development, review, refinement, revision or adoption of the specifications by the contractor, makes no further modifications or makes only trivial, insubstantial or peripheral revisions thereafter to those specifications. Unless the context otherwise indicates, "specifications," as used herein, include performance specifications, detail design drawings, or other technical data prescribing performance, design or manufacturing requirements, or combinations of such documents.

(b) *Policy.* Circumstances suitable for a contractor to assume total system responsibility as described above are frequently present in procurement where a contractor reviews, refines, and revises Government speci-

fications; and in other procurements from the original developer and designer of an item. With respect to other situations, however, the Government should not request a contractor to assume such technical and financial risks unless the contractor is afforded an adequate opportunity by one means or another to develop, or to review and modify, the specifications. The words "adequate opportunity" are intended to mean an opportunity which is more than trivial, unsubstantial or peripheral; i.e., an opportunity commensurate with the risk to be assumed. The Total System Responsibility Clause may be adapted to apply to procurements in which less than total system responsibility is to be assumed by a contractor, e.g., responsibility for a component, assembly, subsystem, etc.

(c) *Clause.* In the procurement circumstances described in paragraph (a) of this section, a clause substantially as follows may be used:

Total System Responsibility. (a) The contractor has represented and this contract has been executed on the basis that the Contractor [has developed/has reviewed, refined and substantially revised [1]] the specifications (which term includes drawings) recited in Section —— of this contract entitled "————." Such specification set forth the performance requirements for the Contractor's proposed [description of end item(s) of supplies or services]. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the [end item(s)] to be delivered or performed hereunder will meet or exceed the performance requirements of the said specifications.

(b) The Contractor hereby acknowledges that it has no right to assert against the Government, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this contract (i) based upon impossibility of performance; defective, inaccurate, unfeasible, insufficient or invalid specifications; implied warranties of suitability of such specifications; or (ii) otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.

(c) Notwithstanding the "Changes" clause or any other clause of this contract, the Contractor hereby agrees that no changes to aforesaid specifications which may be necessary to permit achievement of the performance requirements or any other technical requirements not inconsistent with such performance requirements specified herein for the Contractor's proposed [end item(s)] shall entitle the Contractor either to any increase in the [fixed price/target cost, target price or ceiling price[1]] as set forth in Section —— of this contract entitled "——" or to any extension of the delivery times for the [end item(s)] beyond those set forth in Section —— of this contract entitled "————."

(d) *Procedures.* (1) *Evaluation of contingency.* Where a solicitation includes the foregoing provision, that solicitation may require offerors to submit alternate prices based upon performance of the proposed contractual provisions including and excluding the foregoing clause. The price differential between such alternate offers, if any, should be evaluated to determine (i) its reasonableness and (ii) whether the differential justifies the inclusion of Total System Responsibility in the contract.

(2) *Related provisions.* The specifications referred to in paragraph (a) of the foregoing clause should be enumerated in the contract schedule, identifying each performance specification and each specification of other types, as applicable.

§ 737.7-105 Additional clauses.

The clauses set forth in § 7.105 and this NPD shall be used in accordance with any instructions provided for a particular clause, when it is desired to cover the subject matter thereof.

§ 737.7-105-4 Notice of shipments.

The following provisions shall be used with the Notice of Shipments clause in § 7.105-4 and shall be inserted immediately after the Notice of Shipments clause as provided below.

(a) *Notification to Consignee.* (1) The following clause shall be inserted in all supply contracts where shipments are to be made in carload or truckload lots:

Notice of Shipment to Consignee (Oct. 1963). Whenever a shipment of a carload or truckload lot is destined to a consignee located less than 1,000 air miles from the point of shipment and is tendered to a carri-

[1] Use appropriate phrase.

er hereunder (regardless of whether the shipment is transported under a commercial or Government bill of lading), the Contractor shall send a prepaid telegram to the consignee the same day. The telegram shall include the following information: Contract or order number; date of shipment; brief description of the commodity and how packed; weight in pounds and number of pieces; Government or commercial bill of lading number; complete routing including car number(s) and initials if by rail, or number of truckloads if by truck; military route order number if applicable; and ultimate destination if to be transshipped. When consignee is located more than 1,000 air miles from the point of shipment and shipments are made on commercial bills of lading with inspection at destination, the Contractor shall on the same day send an airmail letter to the consignee, which contains the information outlined above.

When classified contracts are involved, the foregoing clause will be modified as appropriate to provide that the words "contract item number" will be substituted for the words "brief description of the commodity."

(2) Where shipments are not to be made in carload or truckload lots, the DD Form 250 (Material Inspection and Receiving Report) or the Government bill of lading, as appropriate, will be relied upon as the usual notice of shipment.

(b) *Notification to Cognizant Contract Administration Office.* The following clause shall be inserted in all supply contracts where shipments are made on the basis of destination inspection with progressing and expediting to be performed by the cognizant field contract administration office at origin:

Notice of Shipment to Cognizant Contract Administration Office (Jan. 1966). Whenever a shipment is made under this contract (regardless of whether the shipment is transported under a commercial or Government bill of lading), the Contractor shall notify the cognizant field contract administration office by the most expedient means. The notification shall include the following information: date of shipment; contract number; item number and quantity shipped; and name of carrier accepting shipment from the contractor. All notifications made by telephone shall be subsequently confirmed in writing.

§ 737.7-150 Clause for reserve pending execution of release.

The following clause shall be included in all fixed-price contracts requiring a release as a condition precedent to final payment, as prescribed in § 737.32-402(a):

After payment of eighty percent (80 percent) of the total contract price, further payments shall be withheld until a reserve of —— dollars ($——) shall have been set aside, such reserve to be paid to the contractor at the time of final payment. The contractor and each assignee under an assignment in effect at the time of final payment shall execute and deliver at the time and as a condition precedent to final payment, a release in form and substance satisfactory to and containing such exceptions as may be found appropriate by the Contracting Officer, discharging the Government, its officers, agents and employees of and from liabilities, obligations and claims arising under this contract.

The reserve in each case shall be not less than one per cent (1 percent) and not more than four per cent (4 percent) of the total contract price, but in no event more than one hundred thousand dollars ($100,000). (See § 7.104-21 with respect to limitation on withholding of payments.)

§ 737.7-200 Clauses for cost-reimbursement type supply contracts.

§ 737.7-203 Required clauses.

§ 737.7-203-8 Subcontracts.

The Subcontracts clause included in § 7.203-8 may be modified in accordance with § 7.203-8 by the contracting officer, when he deems it appropriate in the case of an individual contract. However, the clause shall not be modified for general application, affecting more than one contract, without obtaining the approval of the Chief of Naval Material (MAT022).

§ 737.7-204 Clauses to be used when applicable.

§ 737.7-204-50 Invoicing instructions for multiple destinations.

In accordance with the instructions in § 737.7-104-502, include the appropriate provisions set forth therein.

§ 737.7-205 Additional clauses.

The clauses set forth in § 7.205 and this NPD shall be used, in accordance with any instructions provided for a particular clause, when it is desired to cover the subject matter thereof.

§ 737.7-205-21 Notice of shipments.

When required by § 737.7-105-4, include a clause as set forth therein.

§ 737.7-300 Clauses for fixed-price research and development contracts.

§ 737.7-303 Clauses to be used when applicable.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-303-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-304 Additional clauses.

The clauses referenced in § 737.7-304 shall be used, in accordance with any instructions provided for a particular clause, when it is desired to cover the subject matter thereof.

§ 737.7-400 Clauses for cost-reimbursement type research and development contracts.

§ 737.7-402 Required clauses.

§ 737.7-402-3 Subcontracts.

The Subcontract clause contained in § 7.402-8(a) may be modified in accordance with § 7.402-8(b) by the contracting officer, when he deems it appropriate in the case of an individual contract. However, the clause shall not be modified for general application affecting more than one contract, without obtaining the approval of the Chief of Naval Material (MAT 022). The same requirements as to level of approval shall apply to modification of the other version of the Subcontracts clause provided by § 7.402-8(c) for contracts without fee with educational institutions, except where a modification is specifically stated in § 7.402-8(c) to be in the discretion of the contracting officer.

§ 737.7-600 Clauses for construction and architect-engineer contracts.

§ 737.7-601 Clauses to be used when applicable.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-601-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-602 Civil works.

The following clause shall be included in contracts and modifications which require, or may require, Civil Works as defined in § 737.1-401-53.

CIVIL WORKS

DELEGATION TO NAVAL FACILITIES ENGINEERING COMMAND

(a) The Commander, Naval Facilities Engineering Command, having cognizance of the construction of all items at privately operated establishments which would constitute Public Works or Public Utilities if constructed at a Shore Establishment of the Navy (such items being hereinafter referred to as Civil Works), is hereby designated as the authorized representative of the ——[1] with respect to any such Civil Works called for by this contract, said delegation including but not being limited to the performance of the following functions:

(i) Approving the selection and compensation of an architect or engineer;

(ii) Approving the selection and fee of a general building contractor;

(iii) Consent to the placement of any subcontract for Civil Works;

(iv) Approving any plans or specifications;

(v) Approving of major alterations or increased costs within the estimated cost set forth in this contract for Civil Works;

(vi) Inspection, supervision, administration of the terms of the subcontract and acceptance of performance;

(vii) Monitoring compliance with labor standards requirements; and

(viii) Ordering or approving changes relating to the Civil Works.

(b) The ——[2] acting for the Commander, Naval Facilities Engineering Command, will have jurisdiction only over the Civil Works design, construction and installation, unless otherwise specifically provided in this con-

[1] Identify activity.

[2] Insert name and address of cognizant NAVFACENGCOM Division.

tract or unless otherwise determined by mutual agreement between the purchasing office and the Naval Facilities Engineering Command.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.7-607 Clause to be used when applicable.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-607-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-800 Clauses for letter contracts.

§ 737.7-802 Required clauses.

§ 737.7-802-5 Definitization.

7-802.5 Definitization. The type of definitive contract to be inserted in the Definitization Clauses, as used in § 3.408(d), refers merely to the general type of contract, (i.e., fixed-price type contracts § 3.404, cost-reimbursement type contracts § 3.405 and other types of contracts § 3-406). The prices proposed at time of conversion and other circumstances surrounding the procurement may then govern the specific type of contract, within the general type specified in the letter contract to be used for the definitive contract.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.7-803 Clause to be used when applicable.

[41 FR 55516, Dec. 21, 1976]

§ 737.7-803-1 Equitable adjustments covering material and energy-related shortages.

See § 737.7-104-1.

[41 FR 55516, Dec. 21, 1976]

Subpart H—Termination of Contracts

§ 737.8-700 Clauses.

§ 737.8-750 Special purpose clauses.

Pursuant to § 8.700, requests for authority to use special purpose termination clauses shall be made to the Chief of Naval Material (MAT 021). However, ASPR Section VIII termination clauses are not in all cases suitable for facilities contracts. Accordingly, procuring activities are authorized to use appropriate termination clauses in such contracts without further reference to the Headquarters Naval Material Command, provided such clauses are consistent with the policies set forth in Part 8 and Part 13, and have been approved as to form and legality by the Office of the General Counsel.

Subpart I—Patents, Data, and Copyrights

§ 737.9-100 Patents.

§ 737.9-103 Patent indemnification of Government by contractors.

§ 737.9-103-1 Patent indemnification in facilities contracts—commercial status predetermined.

A blanket deviation is authorized for use in contracts involving the acquisition of industrial facilities. This deviation permits the Patent Indemnity (Predetermined) clause of § 9.103-1(a) to be modified by the insertion of "(a)" at the beginning thereof and the addition, at the end thereof, of the following new paragraph:

(b) The contractor agrees to insert the provisions of paragraph (a) of this clause, or similar provisions, in all subcontracts or purchase orders for standard commercial articles requiring such subcontractors and vendors to indemnify the Government, and its officers, agents, and employees, against liability, including costs and expenses, for infringement upon any letters patent of the United States. Except with respect to materials, articles, or products designed and built by the Contractor and except with respect to items designed by the Contractor on which the Contractor collects royalties, the Contractor shall not be required to indemnify the Government, or its officers, agents, or employees, under the provisions of said paragraph, unless the Contractor neglected or failed to include provisions, as hereinabove required, in the purchase order or subcontract under which the item or items involved in any patent infringement litigation were purchased.

§ 737.9–107 Patent rights under contracts for research and development.

§ 737.9–107–50 Enforcement of reporting requirements of patent rights clauses.

(a) *Invention Disclosures, Reports and Related Documents.* The ACO is responsible for obtaining and forwarding to the PCO invention disclosures, copies of subcontracts, reports and related documents required to be furnished by contractors under the Patent Rights clauses. Notification of awards and completion of subcontracts shall be similarly obtained for forwarding to the PCO. Requests for authorization to include, in a subcontract for experimental, developmental or research work, a Patent Rights clause other than that of the prime contract shall be referred to the PCO for recommendation. (See § 9.107–4(g)).

(b) *Reimbursement Restrictions.* Appropriate instructions on this subject for the paying officer are contained in paragraph 046352–2 of the NAVCOMPT Manual.

§ 737.9–109 Follow-up of patent rights.

Each procuring activity shall maintain an appropriate system of follow-up in connection with patent rights under its contracts, as required by § 9.109, in order that inventions in which the Government may have an interest may be properly identified, and formal agreements evidencing the Government's rights therein shall be obtained. (See § 737.9–413)

§ 737.9–300 Foreign license and technical assistance agreements.

§ 737.9–301 Technical information for foreign release under section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) and under the Foreign Assistance Act of 1961 (22 U.S.C. 2356).

See SECNAV Instruction 5710.8A, dated 1 December 1959 (32 CFR Part 744) and International Traffic in Arms regulations (22 CFR 121.01–128.01).

§ 737.9–400 Processing licenses, assignments, and infringement claims.

§ 737.9–401 Reporting of patent, trademark, or copyright infringements.

Each procuring activity which receives any direct or indirect charge or threat of patent, trade-mark, or copyright infringement, or which has knowledge of such infringement, shall bring this information to the attention of the Chief of Naval Research (Code 300).

§ 737.9–413 Register of Government interest in patents.

Licenses, assignments, and other interests of the Government in patents or applications for patents are required to be forwarded to the Commissioner of Patents for recording (see § 9.413). This requirement is performed for the Department of the Navy by the Chief of Naval Research. Therefore, the originals of licenses, assignments, and other documents evidencing interests of the Government in patents or applications for patents shall be sent to the Chief of Naval Research (Code 300).

Subpart J—Bonds, Insurance, and Indemnification

§ 737.10–100 Bonds.

§ 737.10–112 Execution and administration of bonds and consents of surety.

§ 737.10–112–50 Bonds.

(a) *Examination.* Where bonds are required in support of a contract, the Contracting Officer shall ascertain that the bond tendered is in the penal sum required and that it properly describes the contract in support of which it was given. Purchasing offices having counsel assigned shall be responsible for examining the bonds as to (1) form, (2) the sufficiency of the surety, and (3) the authority of the agent executing the bond. In the case of other purchasing offices, the bond shall be referred to the cognizant procuring activity for purposes of making this examination. One (1) executed copy of the bond is filed with the contract.

(b) *Exceptions.* (1) Annual Bonds are not to be used for construction contracts.

(2) Annual Performance Bonds (Standard Form 35), a cumulative form, shall not be acceptable for contracts of more than one purchasing office.

(c) *Submission.* (1) Annual Bid Bonds (Standard Form 34) may name the Department of the Navy as obligee for any non-construction bids to the Navy and shall be forwarded to the Contract Insurance Section, Procurement Policy Branch (MAT 0212H), Headquarters Naval Material Command, Washington, D.C. 20360 for examination, approval and custody as a central point of reference.

(2) Annual Performance and Payment Bonds for Master Ship Repair Contracts, a special non-cumulative form, shall be forwarded to the Contract Insurance Section, Procurement Policy Branch (MAT 0212H), Headquarters Naval Material Command, Washington, D.C. 20360 for examination, approval and custody.

§ 737.10–300 Insurance—general.

§ 737.10–301 General.

§ 737.10–301–50 Procedure for treating claims by third persons under Navy contracts providing for assumption of risk by the Government.

(a) The following procedure shall be followed in making all payments pursuant to the contract provisions prescribed in ASPR, under which the Government assumes the risk of liability to third persons. This procedure applies only to the cases of liability to third persons not compensated for by insurance or otherwise.

(b) When a claim is made by a third person for loss of or damage to property, death or bodily injury not compensated for by insurance or otherwise arising out of performance of a contract, the officer in charge shall submit to the procuring activity having cognizance of the contract statements of all pertinent facts, together with his recommendations and the recommendation of the contractor as to the action to be taken with respect to the claim, and the amount, if any, to be paid in discharge thereof. The procuring activity shall promptly forward such statements with such recommendations at it may care to make to the Chief of Naval Material (MAT0212H) for determination, (1) whether the Government has assumed liability for such claim of a third person, and (2) if so, the amount to be paid to such person in discharge of the claim. At the time of submission to the procuring activity, a duplicate copy of such statements and recommendations shall be sent by the officer in charge to the Chief of Naval Material (MAT024N). The Chief of Naval Material shall advise the procuring activity having cognizance of the contract of such action as may be required by such determination unless written approval of different action is first obtained from the Chief of Naval Material.

(c) (1) If the Chief of Naval Material determines that the Government has assumed the liability for the claim of a third person arising out of performance of a contract, such third person shall be paid the amount fixed by the Chief of Naval Material unless pursuant to appeal by the contractor, as provided under the Disputes clause, a different amount shall be allowed to the third person.

(2) If the Chief of Naval Material determines that the Government did not assume such liability, no payment by the Government in respect thereof shall be made, unless pursuant to appeal by the contractor as provided under the Disputes clause, a different decision is made.

(d) The officer in charge under a contract shall instruct the contractor to give such officer immediate notice of any suit or action filed against the contractor arising out of the performance of the contract, the cost and expense of which may be reimbursable to the contractor unless the terms of the contract and the risk of which is uninsured or in which the amount claimed exceeds the amount of insurance coverage the officer in charge shall further direct the contractor to furnish immediately copies of all pertinent papers received by the contractor.

(e) All questions in connection with the matters covered by this directive

shall be referred to the Chief of Naval Material, Contract Insurance Section, Procurement Policy Branch (MAT0212H), or with respect to form and legality, to the Office of General Counsel.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.10-301-51 Payment of amounts due contractors upon final computation of insurance under Government-type retrospective rating plan.

Upon the final computation of the premium under policies of insurance obtained by the contractor pursuant to a Government-type retrospective rating plan approved by the Chief of Naval Material, covering work under a Navy contract which provides that the cost of such insurance is an item of cost to the Government thereunder, an amount may be found due and owing on account of such premium. In such event the Chief of Naval Material shall inform the procuring activity having cognizance of the contract that such amount is due and owing on account of the premium, and, if the funds which have been allocated to the contract are not sufficient, this amount shall be paid as an item of cost under the contract out of the appropriate funds.

§ 737.10-351 Authority of the Insurance Examiner, Procurement and Production Management Division, Headquarters Naval Material Command.

(a) The Insurance Examiner (MAT 024N) shall formulate insurance, bonding and indemnification policies and procedures for application in Department of the Navy procurements and shall supervise their execution pursuant to such administrative instruction as may be issued by the Chief of Naval Material. The Insurance Examiner is designated as the duly authorized representative of the Chief of Naval Material for the performance of the functions described in paragraph (c) of this section.

(b) The Insurance Examiner is available to procurement activities to provide guidance on insurance, bonding and indemnification matters. His telephone number is 202-692-8657/8/9 (commercial) or 222-8657/8/9 (autovon).

(c) The Chief of Naval Material or his duly authorized representive, is authorized to act by direction of the Secretary of the Navy, or as the duly authorized representative of the Head of a Procuring Activity, the contracting officer, or any other naval official designated in such a contract:

(1) To require or approve insurance whenever a contract provides that a contractor shall procure such insurance as may be required or approved by the Department, by the Secretary of the Navy, the Head of a Procuring Activity, the contracting officer, or by any other official of the Department;

(2) To execute, sign or endorse in the name of and by direction of the Secretary of the Navy any and all (i) lost policy releases; (ii) proofs of loss; (iii) subrogation agreements; (iv) endorsements of policies for claims and/or return premiums; (v) payment orders; and (vi) insurance drafts made payable to the Secretary of the Navy and not affecting the obligating of appropriations; and

(3) To advise and recommend to the Secretary of the Navy or other authorized interested officials of the Navy Department regarding:

(i) Insurance drafts affecting the obligating or appropriations; and

(ii) Assignment to assume payment of premiums found to be due after the completion of a contract.

[41 FR 55516, Dec. 21, 1976]

§ 737.10-500 Insurance under cost-reimbursements type contracts.

§ 737.10-501 Policy.

§ 737.10-501-50 Liability of subcontractors to third persons.

The policy of the Department of the Navy is that, in general, it will not assume liability of subcontractors to third persons. However, contracting officers are authorized to extend the principles set forth in § 7.203-22 to cost-plus-fixed-fee subcontracts made with cost-plus-fixed-fee contractors with the Department of the Navy, whenever the particular circumstances are such that in the judgment of the

contracting officer and the Contract Insurance Section (MAT 024N) of the Headquarters Naval Material Command such action will benefit the Government. In such event, the Navy contract shall require the insertion of appropriate provisions in cost-plus-fixed fee subcontracts thereunder.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.10–503–50 Government property in possession of subcontractors.

See § 737.13–101–2.

§ 737.10–552 Leases.

(a) Government-owned personal and real property leased under the authority of 10 U.S.C. 2667 shall be insured except that when more than 75% of the total use of the facilities is for Government work, pertinent information shall be submitted to the Headquarters Naval Material Command, Contract Insurance Section (MAT 024N) for consideration whether the requirement for insurance shall be waived in favor of the Government's assumption of the risk of loss of or damage to the facilities. Leases may be modified as necessary to accomplish the above.

(b) Where insurance is required under the provisions of this directive, the lessee, at his own expense, shall procure and maintain Fire and Extended Coverage insurance or its equivalent and, where applicable, Boiler and Machinery insurance, in an amount equal the replacement value of the property less depreciation or in any lesser amount determined by the contracting officer with the approval of the Contract Insurance Section (MAT 024N), and shall maintain such insurance for the period of the lease. The use of co-insurance clause will be permitted but failure of the lessee to comply with the obligations of such clause will not relieve the lessee of its responsibilities under any other terms of the lease. The above forms of insurance are applicable to land facilities; forms of insurance on other types of facilities (floating drydocks, mobile power plants, etc.) will be required and designated by the Contract Insurance Section (MAT 024N).

(c) The foregoing insurance shall be issued in the names of the lessee and of the United States of America (Department of the Navy) and shall contain a loss payable clause reading as follows:

> Loss, if any, under this policy shall be adjusted with (*Lessee*) and the proceeds, at the election of the Government, shall be payable to the (*Lessee*); any proceeds not paid to the (*Lessee*) shall be payable to the Treasurer of the United States of America.

(d) In addition to the above insurance for the protection of Government-owned property, the lessee, at his own expense, shall insure or otherwise protect his liabilities and those of the Government to employees and their persons.

(e) Each policy of insurance shall contain provision for thirty days prior notice to the Contract Insurance Section (MAT 024N) in the event of cancellation of the policy. A certified copy of each insurance policy shall be deposited with said Insurance Section.

(f) Existing leases involving significant insurance costs shall, to the extent feasible, be modified to conform to the requirements ASPR.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.10–700 Indemnification of contractors and subcontractors.

§ 737.10–700–1 General.

(a) It is Department of the Navy policy to rely upon the commercial insurance industry to the maximum practicable extent to protect its contractors against risks arising under contracts. In some limited situations, however, it may instead be preferable or necessary to provide a form of Government indemnification—whether in lieu of insurance, in excess of underlying insurance, or under, deductible insurance. Instances where indemnification may be explored are:

(1) Where there is a continuing program, such as the nuclear vessel program, where total insurance premium costs over a period of time could well approximate the dollar coverage afforded;

(2) A war risk in areas where hostilities are involved;

(3) Where the cost of insurance is so excessive it is unreasonable and constitutes a "turn down quotation";

(4) Where the Government risk is rated only on its own isolated experience and is not shared with the risks of others, whether or not the risk is unusually hazardous;

(5) Where an urgent requirement affords insufficient time to receive a well-considered insurance quotation;

(6) Where the degree of risk is either very small or is potentially catastrophic; or

(7) Where indemnification of the deductible portion of insurance coverage will substantially reduce insurance costs.

(b) All matters concerning indemnification shall be referred to the Contract Insurance Section (MAT 024N) for decision or recommendation sufficiently in advance of contracting unless otherwise specifically authorized.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.10–701 Indemnification under research and development contracts.

(a) 10 U.S.C. 2354 provides that:

(a) With the approval of the Secretary of the Military Department concerned, any contract of a Military Department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss or of damage to property; and

(2) control of or assistance in the defense by the United States at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the Department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research and development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(b) The authority to approve the inclusion of any such indemnity provision in research or development contract, together with the authority to approve the amount of any payment under 10 U.S.C. 2354(c) is delegated to the Chief of Naval Material and to one assistant designated by him for such purpose. The authority to approve the source of the funds out of which any such payment is made, under the last sentence of the above-quoted section, is hereby delegated to the Deputy Comptroller, Department of the Navy, and to one assistant designated by him for such purpose.

(c) The Chief of Naval Material has designated the Deputy Chief of Naval Material (Procurement and Production) as the assistant to him for the purpose set forth in paragraph (b) of this section.

§ 737.10–702 Indemnification under other than research and development contracts against unusually hazardous risks and nuclear risks not considered unusually hazardous.

Use of the clause set forth in § 10.702(b) for indemnification under Pub. L. 85–804 is authorized in the Department of the Navy by the Secretary of the Navy for contracts embracing specific projects or programs for which such authority is appropriate. Requests for inclusion in such authorization shall be made to the Contract Insurance Section (MAT 024N) with sufficient narrative justification for submission by that office to SECNAV.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

Subpart K—[Reserved]

Subpart L—Labor

§ 737.12-100 Basic labor policies.

§ 737.12-102 Overtime.

§ 737.12-102-4 Approvals.

(a) *Designation of Officials To Approve Overtime Premiums at Government Expense.* (1) Pursuant to § 12.102-4(e), the following persons are appointed, without power of redelegation, for the purpose of making determinations under § 12.102-4:

(i) The Heads of Navy Procuring Activities, as defined in § 1.201-7.

(ii) The Vice Commander of each Systems Command and the Deputy Chief of each Navy Bureau and of the Office of Naval Research; Deputy Chief of Staff for Installations and Logistics of the Marine Corps; and the Deputy and Chief of Staff, Military Sealift Command.

(iii) The Deputy or Assistant Commanders of the Systems Commands, Assistant Chiefs of each Bureau and of the Office of Naval Research, the Director of Contracts or equivalent in each Systems Command and in the Office of Naval Research in charge of contracts, the Project or Deputy Project Manager of the Chief of Naval Material designated Project Management Offices, the Assistant Deputy Chief of Staff for Installations and Logistics of the Marine Corps and the Assistant Chiefs of Staff, Military Sealift Command.

(iv) Fleet, Type, and Military Sealift Command Area and Sub-Area Commanders, with respect to procurements involving alteration, repair, and conversions of vessels.

(2) If overtime premiums at Government expense have been approved or are contemplated in a particular procurement for which a business clearance will be prepared and submitted in accordance with § 737.1-403-50, such clearance shall contain a Statement of Justification indicating that necessary approval(s) for such premiums have been obtained. If appropriate, a copy of such approval(s) or determination(s) obtained may be appended to the business clearance.

§ 737.12-102-7 Construction contracts.

When expediting a construction contract involves additional costs, the Naval Facilities Engineering Command shall be responsible for obtaining the approval of the Assistant Secretary of Defense (Installations and Logistics) required by § 18.111.

§ 737.12-102-50 Exceptions.

The provisions of § 12.102 and § 737.12-102 are not applicable to ballistic missile programs.

§ 737.12-104 Meeting manpower requirements.

(a) In placing large negotiated contracts and in planning delivery schedules, procurement personnel should consider the adequacy of the local labor supply. Classifications of labor market areas are listed in the Department of Labor's "Area Trends in Employment and Unemployment," which is issued to a mailing list. Procuring activities should ensure that their mailing list is kept current and inform the Department of Labor when changes to the list are necessary.

(b) Prospective contractors and subcontractors should provide a reasonable substantiation to procurement personnel of the availability of manpower for contract performance, particularly of critical occupational skills, either on their payroll or within their labor market area. Current and detailed labor market information and employment trends, as necessary to any particular case, should be obtained from the Department of Labor's Bureau of Employment Security, its regional offices, and affiliated State Employment Service Offices. Procurement personnel should make maximum use of the manpower section of pre-award surveys and industrial facility surveys. In the absence of assurance of the availability of occupational skills required for contract performance and necessity for contract placement despite this fact, procurement personnel should inform cognizant production personnel and manpower specialists of the specific manpower deficiencies and the impact thereof on the contract, together with other pertinent facts, so that steps

may be taken to render assistance to the contractor.

(c) In the case of critical labor shortage areas, procurement personnel will in all cases obtain detailed information on labor market conditions before placing contracts involving substantial increases in the current employment level of a contractor. There should be specific evidence that the additional manpower of the required occupational skills is available locally without disruption of other defense work in the area.

(d) The same considerations as above should guide contractors in placing subcontracts or supply orders with other firms and procurement personnel should strongly urge that this be done. Small business personnel now engaged in promoting subcontracting should likewise stress such action. Prime contractors should be assisted, as necessary, to subcontract work outside of labor shortage areas, and also in cases where occupational skill deficiencies are limiting factors for contract performance. Both prime and subcontractors should be advised to inform the local state employment office serving the area in which work on a Government order is to be performed of anticipated manpower requirements for fulfillment of the order.

(e) The preceding manpower considerations should be taken into account on a long-term basis in reaching decisions regarding the location, re-location, expansion or contraction of Government-owned facilities or installations, and in actions taken to broaden or maintain the industrial mobilization base. In addition, such actions, including material allocations, should give consideration to the impact on unemployment levels of labor surplus areas.

(f) Each Navy procuring activity has designated an Industrial Manpower Representative who can provide assistance in taking actions in accordance with this directive, in addition to the Industrial Manpower Assistant of the Headquarters Naval Material Command will take all actions necessary at the national level on matters of manpower supply for Navy production. Such action should be supported by substantiated recommendations when requested.

§ 737.12-104-50 Contractor defense training and manpower utilization.

(a) The policies and purpose of the Navy on contractor's defense training are:

(1) To encourage industry to expand existing training programs and initiate new or additional training programs in the required key occupations;

(2) To ensure that manpower is trained in the required skills and occupations in adequate numbers, and in the areas where and when needed to meet current and projected Navy production goals; and

(3) To ensure realistic training programs tailored to actual needs.

This policy recognizes that the major responsibility for training workers rests on employers, using their own and other normal training resources. The Navy's responsibility is to provide leadership and assistance so as to ensure that necessary manpower is being trained to meet Navy's defense production requirements and that the procurement and production process stresses efficient utilization of scientific and technical skills in private industry.

(b) When a present or impending shortage of manpower in the requisite occupational skills in the plant and local labor market area of a Navy contractor or source of supply affects or threatens to affect present or planned Navy production, Navy procurement personnel and other cognizant Navy production and manpower officers should urge affected Navy contractors or suppliers to initiate or accelerate training programs. To stimulate contractors and suppliers to evaluate training needs and utilization of their work force, copies of the Check List for Evaluating Defense Training and Utilization of Manpower, set forth in paragraph (f) of this section, should be furnished during the procurement and production process. No attempt should be made to offer detailed guidance on the types or methods of training to be used. If the contractor concludes that training programs are needed, he should be advised that var-

ious manpower and training agencies will furnish him advice and technical assistance if he so desires. The initial contact by the contractor, with training agencies should be the local public employment office, whose services should also be enlisted where contractor recruitment campaigns are necessary to augment training programs to meet production schedules. The public employment office will assist in recruiting in such manner as to avoid activities which would be disruptive to other important defense work.

(c) In any particular labor market area in which demands for defense training are greater than can be provided by existing training facilities, procurement and other cognizant Navy personnel, to the extent such information comes to their attention, should advise the Chief of Naval Material of such developing situations promptly and as far in advance as practicable. The Chief of Naval Material should also be informed of any significant observed deficiencies in contractor's training programs and manpower utilization, steps being taken to remedy such deficiencies, and resulting improvements. Industrial Manpower Representatives of procuring activities and the Industrial Manpower Assistant (MAT 0533), Headquarters Naval Material Command, upon request, will assist procurement, production and other cognizant officers in taking actions in accordance with this policy.

(d) Long-term trends indicate that military technology is accompanied by an increasing requirement for technical personnel and, in general, contractors will have to institute re-training programs for their skilled work force in order to meet the demands of technological change. Contractors should place emphasis on (1) augmenting the supply of manpower in critical occupations, a list of which is available in public employment offices, and (2) effecting the efficient utilization of such manpower. It is Navy policy to encourage scholarships by contractors to augment the supply of engineering and scientific personnel, in preference to recruiting such personnel from foreign countries. In this respect, contractors should also utilize a recruiting program with training and educational institutions. Recourse by the contractor should also be made to the recruiting and similar services of the local State public employment office, so as to reduce expensive, nonproductive recruiting campaigns and indiscriminate recruiting advertising which stimulates abnormal labor turnover with a consequent impact on contractor's production schedules, rejection rates, training and recruiting requirements, and costs. It should also be noted that § 15.205-44 provides guidance as to the allowance of training costs under cost-reimbursement contracts.

(e) In the placement of contracts, procurement personnel shall give preference to supplies (1) in labor surplus areas, to the extent permitted by Part 1, Subpart A, and (2) when necessary to preserve occupational skills required for defense production. By judicious utilization of the foregoing, (i) the need for defense training will be mitigated and (ii) the demands for occupational deferments and delays in call of Reservists to active duty will be minimized.

(f) Set forth below is the Check List for Evaluating Defense Training and Utilization of Manpower, referred to in paragraph (b) of this section. The check list is designed to stimulate the defense contractor to evaluate his training and manpower utilization requirements as a basis for appropriate action. It is intended to help management help itself. The list is suggestive and not exhaustive. It will be applicable wholly or in part depending upon such variables as the nature of the contractor's business and size. Procuring activities may reproduce this check list for their own distribution.

CHECK LIST FOR EVALUATING DEFENSE TRAINING AND UTILIZATION OF MANPOWER

Staffing—Do your plans for staffing your organization include:

1. Reliable methods for forecasting your requirements for scientists, engineers, technical, skilled, semi-skilled, and unskilled personnel in terms of a staffing schedule of occupational skills related to the production schedule?

2. Periodic review of your organization structure to determine what changes or improvements in organization will reduce your

requirements for professional and skilled manpower?

3. Use of psychological tests in combination with other techniques to select and place your professional and skilled people including those instances where certain aptitudes are a predominant requirement?

4. Placing overall responsibility with specific persons for developing and carrying out training and utilization programs with continuing top-level support?

5. Using all practicable auxiliary sources of engineering and scientific talent such as engineering college teachers, retired engineers, college engineering students on a part-time basis, engineering consulting firms, drafting contract firms, and research organizations?

6. Utilization of all sources of technical aides including graduates of technical institutes, people from within the shops, college students who do not complete engineering courses, technically inclined high school graduates, and college graduates with courses related to engineering?

7. Maximum utilization of women and the physically handicapped in engineering departments and in skilled occupations?

8. Employment practices which ensure maximum utilization of manpower resources without respect to race, color, or creed?

Training—Does your training program provide for:

1. A periodic audit of job demands which is compared with the background and performance of the individual assigned in order to determine gaps in education or experience?

2. An organized training program to improve on the job skills of those employees otherwise qualified to advance to jobs requiring more skill or responsibility?

3. An indoctrination or formal training program for newly-hired or employed persons which is geared to their job and individual needs?

4. Encouragement to your employees to develop through evening classes, part-time day classes, or guided self-study?

5. Opportunity for technical aides to advance into engineering categories through a cooperative program with a professional school?

6. Instruction of supervisory engineers and scientists in job methods, supervisory techniques, and conference leadership?

7. A training program for such additional supervisors as you may need?

8. One or more workers qualified as job instructors?

9. Sufficient apprentices for your long-term requirement?

10. Maximum utilization of community resources for training including the local vocational school?

Utilization of Highest Skills—Do your work plans and job assignments include:

1. An effective staffing ratio between occupational skill categories?

2. Periodic surveys of individual assignments of personnel to determine if they represent the best contribution to the company and afford the individual the best possible opportunity for utilizing his talents?

3. Effective techniques in planning and coordinating research and engineering projects so that there is a maximum of effective effort in relation to the work of other departments?

4. Maximum use of technical aides to relieve engineers and scientists of routine duties so that they are left free to use their professional talent and creative ability, and upgrading of the labor force as a whole?

5. Standardization and simplification of engineering work so that supporting personnel can be used to maximum advantage in performing subprofessional and administrative duties?

6. An inventory of the skills of your employees to help in utilizing their highest potential?

Incentives—Have you recognized the importance of motivating your work force by:

1. Providing opportunity for advancement, stable employment, favorable working conditions, and adequate equipment?

2. An acceptable job evaluation plan which maintains salary differentials between occupational categories and those with less experience or other qualifications?

3. [Reserved]

4. Providing a management development program for supervisory, technical, and professional personnel to develop their potential at a maximum rate?

5. Providing opportunity for attractive careers to all personnel including technical aides who often aspire to professional status?

6. Encouraging participation in civic affairs and professional societies?

Communications—Does your formal and informal system of communications provide for:

1. Participation of your work force in company planning to include engineers and scientists?

2. Coordination of communications under the direction of each departmental executive?

3. A flow of information on management, production, and engineering matters up, down, and across organizational lines on a systematic basis?

4. Advance information to your professional staff on matters which affect their work, personal security, and future in the company?

5. Stimulation of your work force to think about and suggest methods for improving their training and utilization in your company?

§ 737.12-800 Equal opportunity.

§ 737.12-808 General enforcement.

§ 737.12-808-3 Pre-award compliance check of non-exempt contracts.

The following statement shall be included in each post-negotiation Business Clearance Memorandum or memorandum in lieu thereof submitted in accordance with § 737.1-403-50(c):

Request for pre-award compliance check of non-exempt contracts as required by § 12.803-3. ————.

Subpart M—Government Property

§ 737.13-100 General.

§ 737.13-101 Responsibility and liability for Government property.

§ 737.13-101-1 Responsibility of prime contractors for Government property.

(a) *Procedures To Be Followed in the Event of Loss of or Damage to Government Property.*

§ 737.13-102 Liability of subcontractors for Government property.

The Policy of the Department of the Navy is that, in general, it will not take the risk of loss with respect to Government property while in possession of subcontractors. However, contracting officers are authorized to extend the principles set forth in § 7.203-21(g) to cost-plus-fixed-fee subcontracts made with cost-plus-fixed-fee contractors with the Department of the Navy, whenever the particular circumstances are such that in the judgment of the contracting officer and the Contract Insurance Section, Headquarters Naval Material Command, such action will benefit the Government. In such event, the Navy contract shall require the insertion of appropriate provisions in cost-plus-fixed-fee subcontracts thereunder.

§ 737.13-103 Furnishing military property.

§ 737.13-103-51 Accounting data in contracts involving Navy stores account material in contractor's plants.

See NAVCOMPT Manual, Vol. 3, and NAV SUP Manual, Vol. 2.

§ 737.13-200 Material.

§ 737.13-250 Government-furnished petroleum products.

(a) *Definition.* For the purpose of this directive, the term "petroleum products" means all liquid petroleum fuels, oils, and lubricants required for the development, production or testing of aircraft, aircraft engines, aircraft propellers, drones and support equipment, except items coded nonstandard in Federal Supply Catalog C-9100-IL.

(b) *General Policy.* Determination as to whether petroleum products are to be provided to the contractor as Government-furnished property shall be based on an analysis of which is feasible, more economical and otherwise in the best interests of the Government.

(c) *Determinations.* Prior to the award of any Contract or contract modification that will require the use of petroleum products, the Contracting Officer shall make a written determination whether such products shall be GFP (Government-Furnished Property) or CFP (Contractor-Furnished Property), indicating those to be GFP and those to be CFP. The determination shall be supported by a written justification which includes the information required by paragraph (d) of this section and evidence of the Navy Fuel Supply Office's concurrence therewith.

(d) *Considerations.* The items treated in the following paragraphs (1) through (3), as well as other appropriate considerations, shall be included in the written justification supporting the determination. Supporting data, other than contractor usage data, if applicable, may be used as support for more than one determination provided such data is not more than twelve (12) months old. Oral inquiries and replies shall be confirmed in writing.

(1) *Quantity.* For each type of aviation gasoline or jet fuel, oils and lubricants, the contractor's total annual usage requirements under all existing contracts shall be determined. Anticipated annual usage requirements shall be projected for the next three fiscal years including anticipated contract awards.

(2) *Costs.* Comparison of the cost of furnishing GFP with the price offered for the contractor-furnished petroleum must be on a fair and equitable basis. Navy laid down prices do not include related services such as plane fueling and defueling, purging of fuel tanks, and use of special purpose equipment. When a contractor's unit price includes related services, these added costs, if any, must be added to the Navy laid down unit price. In addition, unit prices for Government-furnished petroleum must, in appropriate instances, include costs of administration (personnel), disposal, and the amortization of leasing facilities. In instances where there is a significant price differential in favor of GFP, this may be offset by appropriate reductions in profit allocation or other contractor costs to favor use of petroleum products on a contractor-furnished basis.

(3) *Facilities.* The availability and costs of storage (Government-owned, contractor-owned, leased, etc.) facilities, handling facilities or direct delivery from the fuel supplier to the plane or engine shall be ascertained and considered. Additional facilities shall not be provided or authorized unless there is a reasonable expectation that the cost of new facilities, particularly tank storage and distribution lines, will be offset by savings through Government-furnished petroleum products within five years. Short-term leases for storage and handling facilities may offer an alternative method of providing facilities if a net saving through GFP will result.

(e) *Navy Fuel Supply Office.* The Navy Fuel Supply Office (NFSO), Cameron Station, Alexandria, Va., is responsible for the inventory control and distribution of liquid petroleum fuels, oils and lubricants to naval activities. Subsequent to a determination to provide certain petroleum products as Government-furnished petroleum, the Contracting Officer shall submit complete information on a contractor's requirements to NFSO. Requirements shall be submitted in accordance with instructions prescribed by the Navy Fuel Supply Office. That office will determine whether requirements shall be furnished by cross-servicing agreements, shipments from Navy storage or by new procurement. In the event that a petroleum item cannot be made available at the time, or in the quantity desired, or at the item price stated in the requisition, NFSO will take no further action on affected items until the Contracting Officer authorizes appropriate amendment to the requisition. Unit prices for requisition purposes are published in the Standard Supplement to the Navy Stock List of Fuels, Lubricants, and Petroleum Products; except for bulk fuel prices which are published as required by Navy Fuel Supply Office Instruction 4265.4.

(f) *Contract Modifications.* In making the determination prescribed in paragraph (c) of this section, consideration shall be given to all existing contracts with a particular contractor in which petroleum products are being used. Where there is a determination to utilize Government-furnished petroleum products, it will be necessary to establish a suitable change point which will not disrupt operations or affect delivery schedules. Contract modifications shall be negotiated by the office procuring the end equipment at the earliest practicable time to provide Government-furnished petroleum products on all items which met the considerations stated in paragraph (d) of this section, and requirements for the same grade and type of items shall be consolidated accordingly.

§ 737.13-600 Administration of Government production and research property.

§ 737.13-651 Research and development facilities.

(a) 10 U.S.C. 2353 provides that, subject to certain conditions set forth therein, a contract of a Military Department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor of research, developmental, or test facilities and equipment that the Secretary of the Department concerned determines to be necessary for the performance of the contract. DOD Directive 4275.5 of 14 November 1966 (SUBJ: Industrial Fa-

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cility Expansion and Replacement) provides that facilities projects having an estimated cost in excess of $1,000,000 of new monies are to be submitted to the Director of Defense (Research and Development) for approval. In order to ensure uniform procedures for the review and approval of all facilities projects, research and development facilities projects shall be reviewed and approved in accordance with the procedures for industrial facilities projects as specified in NAVMAT Instruction 4860.13A (Industrial Facilities Program).

(b) Where non-severables are to be installed on property not owned by the government, appropriate clauses shall be added in accordance with the provisions of U.S.C. 2353.

(c) Facilities may be provided for either directly in the research and development contract concerned, or in a separate facilities contract which refers to the research and development contract concerned. In the former case, the facilities will, after construction or installation, be transferred to a separate facilities contract, if such separate contract is required by the provisions of § 13.402.

§ 737.13-651-1 Requirement for review by Navy Facilities Review Board of change in capacity of Government-owned-contractor-operated research and development facilities.

See SECNAV Instruction 5420.10 (ONR: 108).

§ 737.16-652 Facilities.

(a) *Policy for the Provision of Industrial Facilities.* See NAVMAT Instruction 4860.13A (Industrial Facilities Program).

(b) *Protection of Government's Interest in Facilities.* (1) Every contracting officer in negotiating or in making a supply contract shall make sure that any payments for the purchase of, or to aid in the acquisition of, facilities which are not of the type commonly classified as expendable, are separately and clearly set forth and not buried or otherwise hidden in a lump price. No payments under any contracts shall be made on account of facilities, in excess of proper depreciation, unless the interest of the Government in such facilities is recognized and protected by the contract.

(2) Just what constitutes such protection of the interest of the Government will vary in each individual case and will depend upon the nature of the facilities. Usually it will be necessary to assure the Government of the privilege of having the facility used in the performance of Government contracts, free of any charge for the use of the part of the facility paid for by the Government and also to have some agreement as to the disposition of the interest of the Government in the facility. Provision should be made that the Contractor:

(i) Maintain the facility in good condition;

(ii) Attach no lien nor convey to another all or any portion of the facility;

(iii) Make no material alteration in the nature of the facility;

(iv) Give priority to Government orders; and

(v) Not include in any supply price any depreciation or amortization of the part of the facility paid for by the Government.

All procurement officers must be sure in making a contract, the fulfillment of which may require the use of a facility covered by an agreement to the effect that no depreciation or amortization of such facility shall be included in the price, that such agreement is unmistakably adhered to and that depreciation and amortization of such facility are definitely excluded from the price.

(c) *Research and Development Facilities.* See § 737.13-651.

§ 737.13-700 Contract clauses.

§ 737.13-702 Government property clause for fixed-price contracts.

§ 737.13-702-50 Deviations for fixed-price (and cost-reimbursement) contracts.

(a) In many cases the interest of the Government requires the furnishing to contractors of material, the relatively low value of which renders impracticable the administrative burden of using the clauses in § 13.701.

(b) Accordingly, Systems Commands, Bureaus and Offices having inventory

control of material may furnish such material, subject to the availability of material in the supply system, to prime contractors without using either of the contract clauses set forth in § 13.701, subject to the following conditions:

(1) Title to all material furnished shall remain in the Government;

(2) The maximum dollar value of material furnished under the authority of this directive in connection with any one transaction shall not exceed $5,000;

(3) The material furnished is to be incorporated into the end product being procured under the contract, or is to be consumed directly in the performance of such contract. (Any material furnished not so incorporated or consumed will be returned to the Government (at the contractor's expense) in the same condition as received, reasonable wear and tear excepted. An appropriate refund or adjustment will be made for any material so returned);

(4) The contractor warrants that the material cannot be obtained from commercial sources in sufficient time to meet the delivery requirement of the contract; and

(5) The contractor agrees to pay to the Government either (i) the book price of the material furnished, plus the cost of handling and packing (shipment to be made on Commercial Collect Bill of Lading); or (ii) the price at which the material would be available to the contractor, F.O.B. supplier, if obtained from commercial sources, whichever is the greater.

(c) Form NAVEXOS 3493 (Rev 9-61), properly executed, shall be submitted by the contractor to the appropriate Systems Command, Bureau or Office prior to the furnishing of any material.

(d) The Field Contract Administrator, prior to giving his approval to the request, shall make such examination as he considers necessary to confirm that the contractor would be able to obtain the material from commercial sources at the unit price(s) shown in Column 9 on the request.

Subpart N—[Reserved]

Subpart O—Contract Cost Principles and Procedures

§ 737.15-100 Applicability.

§ 737.15-107 Advance understandings on particular cost items.

(a) See § 737.1-405-51 for Navy-wide advance understandings on particular cost items.

(b) See § 737.3-705(a) for prior approval required for advance understandings by contracting officers where overhead rates are negotiated.

§ 737.15-150 Negotiated overhead rates.

See § 737.3-700.

§ 737.15-200 Principles and procedures for use in cost-reimbursement type supply for research contracts with commercial organizations.

§ 737.15-201 Basic considerations.

§ 737.15-201-3 Definition of reasonableness.

(a) Application of "Contractor Weighted Average Share in Cost Risk" (CWAS). When an ACO is evaluating a CWAS rating between 50 and 64 points inclusive (§ 15.201-3(b)(1)(ii)), the ACO's consideration should include, but not be limited to the following:

(1) Actual CWAS rating. A CWAS rating of 64 points would receive more favorable consideration than a CWAS rating of 50 points.

(2) Analysis of contractor's "contract mix" trend. This would indicate the current trend of increased or decreased cost participation and responsibility. A review of outstanding proposals and quotas would also indicate the contractor's potential contract mix.

(3) Review current contractor performance evaluation.

(4) Status of system, reviews would indicate the extent of government review of contractor procedures, and resulting approvals/consent and confidence.

(5) That 35 points of a profit center rating result from competitive firm

fixed-price, competitive fixed-price with escalation contracts, and commercial sales.

Once a determination is made that a contractor is CWAS qualified, the rating carries the same weight as a CWAS-qualified contractor with a rating of 65 or more points.

§ 737.15–205 Selected costs.

§ 737.15–205–35 Research and development costs.

(a) *General.* (1) This section sets forth responsibility and procedures for negotiation of advance agreements covering independent research and development costs as defined in § 15.205–35, § 15.107 and DOD Instruction 4105.52 dated 28 June 1960. § 15.205–35 requires advance agreements with contractors receiving payments of $2 million or more under DOD contracts. Contractors receiving payments less than $2 million are not required to negotiate advance agreements, however, allowable IR&D costs shall be computed by a formula prescribed by § 15.205–35(d)(2).

(2) Advance agreements shall be negotiated with any contractor meeting the criteria set forth in § 15.205–35. The Tri-Service negotiation will be sponsored by the cognizant departmental central office as established in a Defense Procurement Circular published annually.

(3) When an advance agreement is appropriate and the contractor is doing business with more than one military department, the joint negotiation procedures prescribed in paragraph (b) of this section shall apply. When an advance agreement covering independent research and development has been negotiated, whether resulting from joint negotiation or centralized negotiation, it will be applicable to and binding upon all negotiated Navy contracts which provide for the recognition of independent research and development costs, subject to any existing pertinent special contract provisions.

(b) *Procedure with Respect to Joint Negotiations.* (1) The Coordinated Negotiations Staff: (MAT 02D), Headquarters Naval Material Command, shall:

(i) Represent the Navy in selecting the contractors for joint negotiations;

(ii) Agree to assignment of contractors to a single department (called the sponsoring department), for purposes of negotiating advance agreements; and

(iii) Conduct the negotiation of advance agreements with those contractors assigned to the Department of the Navy for sponsored joint negotiations.

(2) With regard to Navy sponsored contractors, the Coordinated Negotiation Staff will assure that any necessary technical review of the contractor's independent research and development program is accomplished. The results of this review will be given due consideration in the negotiation of advance agreements to the extent that technical and scientific factors are appropriate in establishing the amount of Government support to the contractor's program. It will be the responsibility of the Coordinated Negotiation Staff to obtain from the contractor cost and financial information, and other pertinent facts having a bearing on the review of the contractor's program and the negotiation of an advance agreement.

(c) *Procedure with Respect to Technical Evaluation.* § 15.205–35(d)(1)(C) provides that Companies which meet the $2 million dollar threshold shall submit technical and financial information to support their proposed IR&D program in accordance with guidance furnished by the Armed Services Research Specialists Committee (ASRSC). SECNAVINST 3900.40 dated 26 August 1972, designated the Chief of Naval Research as the Navy IR&D Program Manager. The Office of Naval Research coordinated technical report findings are submitted to MAT 02D in support of the negotiation advance agreements.

(d) *Confirmation of Agreement.* All advance agreements for independent research and development negotiated by the Navy shall be confirmed in writing by the Head, Coordinated Negotiation Staff (See § 737.1–405–51) with the contractor and this contractor and this confirmation shall indicate the extent of support, including the maximum dollar amount, and the basis of application to be accorded the

contractor's independent research and development program. Copies of the negotiation report are made available to all interested activities.

§ 737.15-205-50 Navy IR&D Hearing Panel.

(a) Pursuant to Section 203(b) of Pub. L. 91-441 and § 15.205-35(d)(1)(H) and § 15.205-3(d)(2)(A)(viii), respectively, there is hereby established the Navy IR&D Hearing Panel. It shall consist of one representative designated by the Assistant Secretary of the Navy (Installations and Logistics) who shall be Chairman, one representative designated by the Assistant Secretary of the Navy (Research and Development), and one representative designated by the General Counsel. Alternates may be designated to act in the absence of the members.

(b) The Panel shall be responsible for hearing and deciding all appeals taken by contractors pursuant to § 15.205-35(d)(1)(H) and § 15.205-3(d)(2)(A)(viii) from decisions made by contracting officers to reduce independent research and development (IR&D) and bid and proposal (B&P) payments pursuant to § 15.205-35(d)(1)(G) and § 15.205-3(d)2(A)(viii).

(c) Such decisions of contracting officers shall advise the contractor of his right to appeal to the Panel. Notice of intent to appeal shall be addressed to the Panel, and shall be submitted by the contractor within 30 days after receipt of the contracting officer's decision to the Chief of Naval Material, Coordinated Negotiation Staff (MAT 02D). The Head of the Coordinated Negotiation Staff shall forward the contractor's appeal and such additional documents and information as the contractor may submit, together with his position thereon and such other information as he deems pertinent, to the Chairman of the Panel for disposition.

(d) The decision of a majority of the Panel shall constitute the final and conclusive determination of the Department of the Navy. The Panel may establish such additional procedures for processing appeals as are consistent with the foregoing.

Subpart P—Procurement Forms

§ 737.16-200 Forms for negotiated procurement.

§ 737.16-250 Cost incurred on contract (DD Form 1177).

(a) DD Form 1177 (Cost Incurred on Contract is a part of the Cost and Economic Information System designed to furnish historical cost information, performance information, and certain other data to assist the parties to a contract in reaching prices equitable to both parties. It is authorized for use only in major procurements for airframes, target drones, guided missiles, engines, fire control equipment, major electronic equipment, and other major equipment or components. Its use is further limited to those programs where:

(1) Effective price competition does not exist as the result of (i) a sole source or limited source situation, or (ii) a substantial Government investment in facilities, special tooling, development, or preparation for production.

(2) Additional mobilization capacity is being developed with Government assistance and cost with respect to such items as facilities, special tooling, engineering, preparation for production, financing, etc., are necessary for planning purpose, price comparisons or the negotiation of reasonable prices with the new mobilization source for the first production order to follow-on orders.

(b) The form shall be submitted quarterly by the contractor within 30 days after the close of each calendar quarter during the period of contract performance. The cost information to be included in the form shall be that recorded in the contractor's books (as well as such other information as plantwide rates, number of completed units, etc.)

(c) Cost elements and related amounts reported on DD Form 1177 shall conform as closely as practicable to that furnished by the contractor in cost breakdown for pricing purposes. Where cost elements normally reported separately for pricing purposes are combined into major cost categories

on DD Form 1177, a reconciliation shall be furnished in the business clearance requesting DD Form 1177 reporting by relating cost elements reported on DD Form 1177 with the corresponding cost elements used in cost breakdowns for pricing purposes.

(d) When the contract requires submission of DD Form 1177 reports a minimum of six (6) copies shall be submitted quarterly by the contractor to the cognizant inspector or field contract administrator designated in the contract. He shall review and endorse each report. The endorsement shall include a statement as to the completeness and accuracy of the information present (except for verification of reported costs) together with an explanation of any deviations or omissions from reporting requirements contained in the contract and indication of the action taken for contractor's compliance on current and subsequent reports. Distribution of the reports shall be as follows:

(1) Two copies to the cognizant procuring activity;

(2) One copy to the Procurement Control and Clearance Division (MAT 022); Headquarters Naval Material Command;

(3) One copy to the field contract administrator designated in the contract;

(4) One copy to the cognizant auditor;

(5) One copy to the cognizant Area Supervisory Inspector (if requested).

(e) To the extent that audit of costs is authorized by the terms of the contract, other than provisions applying to use of DD Form 1177, *the cognizant auditor shall verify the accuracy of cost data reported* on DD Form 1117 by comparison with costs reported on the contractor's books of account and submit, within 30 days after receipt of the contractor's report, five (5) copies of his findings to the cognizant contract administration office designated in the contract for endorsement and distribution to the same activities as the basic report. The auditor's findings for each quarterly report shall include:

(1) Disclosure of any significant differences between costs reported on DD Form 1177 and costs stated on the contractor's books of accounts together with recommendations for resolution of differences.

(2) Notification of any significant cost representations by the contractor which are considered by the cognizant military auditor to be unreasonable or of doubtful propriety.

(3) Notification of any significant accounting changes affecting cost elements.

Periodically, the accuracy of the contractor's cost accumulations will be confirmed by selective test procedures in sufficient depth to detect significant errors in reporting. Any discrepancies found will be commented on in the next regularly due report of the auditor. At contract completion or redetermination, a final report setting forth the result of audit in summary form shall be furnished the inspector concurrently with the submission of the advisory report prepared for pricing purposes or the contract Audit Closing Statement, as the case may be. The summary of audit findings shall include a brief reconciliation between the amounts reported on DD Form 1177, the amounts shown in the contractor's final cost statement or price proposal, and the costs allowed or accepted by the auditor.

§ 737.16–500 Special contract and order forms.

§ 737.16–501 Negotiated utility service contract forms.

§ 737.16–501–1 Estimated annual cost $2,500 or less (unregulated) and $10,000 or less (regulated).

(a) *When Written Contract Is Not Required.* ASPS No. 5, paragraph S5–201 describes the conditions under which the use of a written contract is not required in the procurement of utility services. In addition thereto, but subject to all the other conditions and requirements of S5–201, the Commander, Naval Facilities Engineering Command is authorized to procure unregulated public utility services without written contract where the anticipated annual charges will not exceed $2,500 and regulated public utility services without written contract where the anticipated annual charge

will not exceed $10,000 and where a connection or termination charge does not exceed $1,000 or $2,500, respectively. This authority may be delegated by the Commander, Naval Facilities Engineering Command as he deems necessary. In all instances where utility services are procured without the use of a written contract, payment therefor will be made on the basis of monthly statements submitted in conformity with applicable regulations, including ASPS No. 5, paragraph S5-202.

§ 737.16-501-2 Estimated annual cost over $2,500 (unregulated) and over $10,000 (regulated).

See § 737.16-501-50.

§ 737.16-501-50 Forms and clauses for written contracts.

Whenever utility services are to be procured by written contract, ASPS No. 5, paragraph S5-203 shall be followed, except as otherwise provided in § 5.803 (authorizing the use of purchase orders under GSA contracts).

§ 737.16-800 Miscellaneous forms.

§ 737.16-812 Release and assignment forms.

§ 737.16-812-50 Standard release forms.

(a) The form of release set forth in § 16.812(b) shall be used as the standard form of release to be obtained from contractors under cost-reimbursement type contracts, except facilities contracts, within § 737.32-402(a). The form of release set forth in paragraph (c) of this section shall be used as the standard form of release to be obtained from contractors under fixed-price types of contracts providing for an adjustable price within § 737.32-402. The form of release set forth in paragraph (d) of this section shall be used as the standard form of release to be obtained from contractors under facilities contracts within § 737.32-402(a), after acquisition, construction, installation and completion of the facilities. The form of release set forth in § 16.812(c) shall be used as the standard form of release to be obtained from assignees under cost-reimbursement type contracts, except facilities contracts. The form of release set forth in paragraph (e) of this section shall be used as the standard form of release to be obtained from assignees under fixed-price and facilities contracts within § 737.32-402(a) under assignments which are in effect at the time of final payment. Each of the prescribed forms may be modified to include such of the exceptions authorized by § 737.32-402(b) and § 737.32-402(c) as may be found by the contracting officer to be appropriate under the contract concerned.

(b) Each release shall be executed in quadruplicate, and shall be distributed as follows: On executed copy to the contractor or assignee, as the case may be: one executed copy to the contracting officer; and the executed original and one executed copy to the disbusing officer, who will forward the original to the General Accounting Office. The approval of the contracting officer shall be indicated on all copies of releases containing any of the exceptions provided in § 737.32-402(b) and § 737.32-402(c).

(c) The following form is for contractor's release under fixed-price type contracts providing for an adjustable price as described in § 737.32-402(a):

CONTRACTOR'S RELEASE UNDER CONTRACT

KNOW ALL MEN BY THESE PRESENTS: In consideration of the premise and the sum of ———— ($——) lawful money of the United States of America (hereinafter called the "Government") ———— ($——) of which has already been paid and ———— ($——) of which is to be paid by the Government under the above mentioned contract, the undersigned Contractor does, and by the receipt of said sum shall, for itself, its successors and assigns, remise, release and forever discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of said contract.

IN WITNESS WHEREOF, this release has been duly executed this ———— day of ————, 19—.

(Witness)

_____
(Contractor)

By: _____
Title: _____

NOTE.—In the case of a corporation, witnesses are not required but the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ Secretary of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor was then _____ of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL] _____

(d) The following form is for contractor's release under facilities contracts:

CONTRACTOR'S RELEASE UNDER CONTRACT

_____

WHEREAS, the United States of America, hereinafter called the "Government," and _____, a corporation organized and existing under and by virtue of the laws of the _____ and doing business at _____ hereinafter called the "Contractor," entered into Contract _____, dated _____ under which the Contractor undertook to acquire, construct, install and complete certain facilities at _____; and

WHEREAS, said contract requires that the Contractor shall deliver a release in form and substance satisfactory to the Government before final payment to the Contractor under said contract for the acquisition, construction, installation and completion of said facilities; and

WHEREAS, said facilities have been acquired, constructed, installed and completed, and the Contractor has requested said final payment; and

WHEREAS, other provisions of said contract are to continue in full force and effect;

NOW, THEREFORE, in consideration of the premises and the sum of ($——), _____ ($——) of which has already been paid and _____ ($——) of which is lawful money of the United States of America, to be paid by the Government under said contract, the Contractor does, and by the receipt of said sum shall, for itself, its successors and assigns, remise, release, and forever discharge the Government, its officers, agents and employees, of and from all liabilities, obligations and claims whatsoever in law and in equity arising under or by virtue of, or on any manner connected with, the acquisition, construction, installation and completion of said facilities.

IN WITNESS WHEREOF, this release has been duly executed this _____ day of _____, 19—.

_____
(Contractor)

_____ By: _____
(Witnesses) Title: _____

NOTE.—In the case of a corporation, witnesses are not required but the certificate below must be completed.

CERTIFICATE

I, _____, certify that I am the _____ Secretary of the corporation named as Contractor in the foregoing release; the _____ who signed said release on behalf of the Contractor was then _____ of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL] _____

(e) The following form is for assignee's release under fixed-price and facilities contracts:

ASSIGNEES'S RELEASE UNDER CONTRACT

_____

KNOW ALL MEN BY THESE PRESENTS: In consideration of the premises and the sum of _____ ($——) lawful money of the United States of America (hereinafter called the "Government"), _____ ($——) of which already has been paid and _____ ($——) of which is to be paid by the Government under the above mentioned contract, the undersigned _____, Assignee of _____. Contractor under said contract, does and by the receipt of said sum shall for itself, its successors and assigns, remise, release and forever discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of said contract and assignment.

IN WITNESS WHEREOF, this release has been duly executed this _____ day of _____, 19—.

_____

_____
(Witnesses)

_____
(Assignee)

By: ————————————————
Title: ————————————————

NOTE—In the case of a corporation, witnesses are not required by the certificate below must be completed.

CERTIFICATE

I, ————————————, certify that I am the ———— Secretary of the corporation named as Assignee in the foregoing release; that ————————————who signed said release on behalf of the Assignee was then ———— of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL] ————————————

§ 737.16-812-51 Modifications in assignment form when executed by contractors located in California.

(a) § 15.812(d) approves for use a form for Contractor's Assignment of Refunds, Rebates, and Credits required by paragraph (f) of the Allowable Cost, Fixed Fee, and Payment clause set forth in § 7.203-4. When the form is to be executed by contractors performing contracts in California, the form set forth in § 16.812(d) shall be revised as provided below.

(1) The paragraph numbered "1" shall be revised to read as follows:

1. Assign, transfer, set over and release to the UNITED STATES OF AMERICA (hereinafter called the Government) all right, title and interest to all refunds, rebates, credits or other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder (except those for refunds or rebates of, or credits for, taxes paid to the State of California or any political subdivision thereof).

(2) The following paragraph shall be added immediately following the paragraph numbered "3":

4. In the event the contractor obtains or receives any refund or rebate of, or credit for, taxes paid to the State of California or any political subdivision thereof, in connection with the performance of this contract, and for which the contractor was paid or reimbursed by the Government, the contractor agrees to pay over to the Government an amount equal to such refund or credit (including interest paid or credited to the contractor incident to such refund or credit to the extent that such interest was earned after the contractor was paid or reimbursed by the Government for such taxes). In the event the contractor receives any benefit in lieu of or in addition to such a refund or credit, the contractor agrees to pay over to the Government an amount equal to such benefit.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

Subpart Q—Extraordinary Contractual Actions To Facilitate the National Defense

§ 737.17-200 Requests for contractual adjustment.

§ 737.17-201 Authority of the Secretary.

§ 737.17-201-50 The Secretary of the Navy.

The Secretary of the Navy has retained all authority set forth in Part 17, Subpart B, not delegated in § 737.17-201, § 737.17-202, § 737.17-203 and § 737.301-51.

§ 737.17-201-51 The Chief of Naval Material.

The Chief of Naval Material is authorized to amplify or implement this Section by appropriate directive or instructions not inconsistent with this Section.

§ 737.17-202 The Navy Contract Adjustment Board.

There is hereby established in the Headquarters Naval Material Command the Navy Contract Adjustment Board. The Board shall consist of a chairman and not less than two nor more than six members, all of whom will be appointed by the Chief of Naval Material. Alternates may be appointed by the Chief of Naval Material to act in the absence of members. The Board shall be organized in the manner set forth in § 17.202-1, and the Board shall exercise the authority and discharge the duties set forth in Part 17 as related to Contract Adjustment Boards. The Board shall be the successor to the former Navy Contract Adjustment Board established under the authority of Title II of the First War Powers Act and Executive Order 10210, and, to the extent of the Board's authority, the Board may take

action on any matter upon which the former Navy Contract Adjustment Board might properly have acted prior to 30 June 1958. The Board shall be responsible for making, on behalf of the Navy, such reports as may be required by the Office of the Secretary of Defense concerning actions under the Act of 28 August 1958 and Executive Order 10789. All matters of interpretation and questions of law arising in connection with requests submitted to the Navy Contract Adjustment Board shall be decided by the Office of the General Counsel, which Office shall provide the Board with all necessary legal advice and assistance.

§ 737.17-203 Authority of other officers and officials.

(a) *Authority.* The officers and officials designated in paragraph (b) of this section shall exercise the authority and discharge the duties set forth in Part 17 as related to officers and officials having authority under § 17.203.

(b) *Delegations.* The designees under Commandant of the United States paragraph (a) of this section are as follows:

Commander of each Systems Command;
Chief of Naval Research;
Aviation Supply Officer, Philadelphia;
Commander, Military Sealift Command; and
Marine Corps.

(c) *Redelegations.* The authority hereby delegated may be redelegated, with or without the authority to make successive redelegations, and under appropriate terms, conditions, and limitations, and subject to the following restrictions:

(1) The authority set forth in § 17.203(a)(i) to deny requests for adjustment may not be redelegated below the Director of the procuring activity, or the head of a field purchasing activity.

(2) The authority set forth in § 17.203(a)(ii) and (iii), may not be redelegated below the Director of the Contracts Division or the Director of the Purchasing Division of a procuring activity.

(d) *Copies of Redelegation.* Two copies of each redelegation of authority as authorized above, shall be forwarded to the Navy Contract Adjustment Board.

(e) *Approval of Counsel.* Each exercise of the authority set forth in § 17.203(a) by officers and officials listed in § 17.203(b)(ii) and § 737.17-203(b) shall have the prior approval of Counsel for the procuring activity involved.

§ 737.17-208 Processing cases.

§ 737.17-208-1 Investigation.

(a) The cognizant procuring activity shall take the following action in connection with contractors' requests where it is considered necessary to establish financial or cost facts:

(1) Obtain a formal advisory audit report from the cognizant Defense Contract Audit Agency (DCAA); i.e., the Navy Area Audit Office having cognizance of the geographical area in which the procuring activity is located);

(2) Clearly identify with audit request the areas which should be verified and any specific accounting information needed; a copy of the pertinent financial or cost data submittted by the contractor should accompany the request; and

(3) Forward the advisory audit report to the Board as part of the case file in those cases submitted to the Navy Contract Adjustment Board under § 17.208-3.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.17-208-2 Disposition below Secretarial level.

Where a contractor's request for contractual adjustment is denied below Secretarial level, the contractor shall be furnished a letter explaining the reasons for the denial. See § 737.17-208-5(b).

§ 737.17-208-3 Cases referred to the Navy Contract Adjustment Board.

Procuring activities shall provide the Navy Contract Adjustment Board with six (6) copies of any case referred to the Board for decision under the provisions of Public Law 85-804. In addition, one (1) copy shall be forwarded directly to the Director of Contract Fi-

nancing (NCD-4), Office of the Comptroller General.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.17-208-5 Maintenance of records and reporting under Part 17, Subpart B.

This paragraph summarizes the requirements for records and reports by the procuring activities under Part 17, Subpart B, and § 737.17-200, which are to be forwarded to the Headquarters Naval Material Command (Navy Contract Adjustment Board), in addition to the submission of cases under § 17.208-3:

(a) When the cognizant procuring activity receives a request for contractual adjustment under Part 17, Subpart B, the preliminary record required by § 17.207-3 is to be prepared and forwarded immediately. Each procuring activity shall number serially each request as received by it, beginning with number "1". This number shall be inserted in the preliminary record after the name of the activity (see § 17.401(vii)).

(b) When action is completed upon a request by issuance of a contractual document or a letter of denial, there shall be attached together and forwarded immediately, the documents required by § 217.208-2(b), § 17.208-4(b), and § 737.17-208-2 as follows:

(1) Two copies of the Memorandum of Decision;

(2) One copy of the contractual document implementing the decision, or the letter of denial, as appropriate; and

(3) One copy of the final record in the case.

Items (1), (2) and (3) above shall bear the serial number assigned to the request in accordance with paragraph (a) of this section.

(c) When action is completed upon a request by the contractor's withdrawal of its request, there shall be prepared and forwarded immediately, one copy of the final record required by § 17.280-2(b) bearing the serial number assigned in accordance with paragraph (b) of this section.

(d) The procuring activities shall furnish to the Board such other records or information as it may request concerning requests for adjustment under Part 17, Subpart B.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55516, Dec. 21, 1976]

§ 737.17-208-6 Interdepartmental coordination.

The procuring activity responsible for processing a contractor's request for contractual adjustment under a Navy procurement shall be responsible for establishing liaison and joint action with other Military Department and other departments and agencies of the Government except that the Navy Contract Adjustment Board shall have such responsibility after any such case is submitted to it. The cognizant procuring activity shall be responsible for all other interdepartmental coordination under § 17.208-6, except that a finding that a contractor is essential to the national defense for performance of Navy contracts or as a source of supply to the Navy may be made only by the Navy Contract Adjustment Board. Where a procuring activity desires to recommend such a finding, its recommendation shall be submitted to the Board by a letter in the form set forth in § 17.208-3 but containing only such of the listed data as may be sufficient for this purpose.

§ 737.17-300 Residual powers.

§ 737.17-301 Delegation of authority.

§ 737.17-301-51 Transfer of sale of Government property to contractors and subcontractors.

(a) *Delegation.* In accordance with § 17.301. there is hereby delegated to each officer and official listed in § 17.203(b)(ii), without authority to redelegate, authority to approve, authorize and direct the transfer or sale of Government property having an estimated value not in excess of $50,000 to any Navy contractor or subcontractor or vendor of such contractor, when in his judgment:

(1) Such transfer or sale is necessary or desirable to facilitate the performance of the Navy contracts involved;

(2) It is not feasible to accomplish the transfer or sale under the provisions of Part 13 or § 737.13-100; and

(3) Under all the circumstances, the transfer or sale will facilitate the national defense.

(b) *Prior Approval.* Before making any such transfer the procuring activity concerned must secure the prior approval of the Systems Command or Inventory Control Point having inventory control of the property involved.

(c) *Limitations as to Property Involved.* The authority delegated hereby shall not extend to:

(1) Property which has been declared excess to the needs of the Department of Defense, or has been reported for screening, unless such property has been withdrawn in accordance with NAVSUPINST 4500.12;

(2) Property listed in NAVSUPINST 4500.12; and

(3) Property subject to a mandatory allocation order, unless the transfer involved is in compliance therewith.

(d) *Payment.* The prices at which the material will be sold shall be determined in the same manner as they are determined under § 737.13-702-50(a)(v). The provisions for reimbursement or payment to the Government and the other accounting requirements set forth in NAVSUP Manual, Vol. II, Par. 25360, shall apply to each such transfer.

(e) *Records.* One copy of the Memorandum for Approval required by § 17.303 shall be forwarded to the Chief of Naval Material, when executed, with two additional copies for the Navy Contract Adjustment Board.

Subpart R—[Reserved]

Subpart S—Transportation

§ 737.19-200 Planning and solicitation.

§ 737.19-204 Consignment and marking instructions.

Consignment data in contracts shall be in accordance with the consignment instructions in the Terminal Facilities Guide, United States Navy, Marine Corps, and Coast Guard (NAVSUP Pub. 445, MCO P4600.9). Improper consignments result in unnecessary expenditure of transportation funds because of switching and other charges and delayed delivery of material.

§ 737.19-204-1 Invoicing instructions for classified contracts.

To establish a uniform procedure for the preparation of invoices relating to classified contracts, procuring activities shall add the following paragraph to the invoicing instructions pertaining to such contracts:

> In order to prevent disclosure of classified information, invoices submitted under this contract shall be so prepared that the supplies or service covered thereby can be identified only by reference to the contract. For example, the invoice may state "Contract N——, Item 2, 100 @ $1.00-$100.00." The security classification shown on the contract shall not appear on the invoices.

§ 737.19-207 Mode of transportation.

(a) *The Contract as Awarded.* Contracts and purchase orders normally shall not specify a particular method of transportation or a particular carrier for the delivery of contract items. If the contracting officer considers it necessary for the Navy to control the method of transportation (e.g., so as to expedite the movement of contract items or otherwise to fulfill special Navy requirements), the procurement shall generally be made on the basis of delivery f.o.b. origin, and this is a valid reason for departing from the policy of § 19.104. However, when special types of transportation equipment or limited facilities for the delivery and receipt of material at destination permit the use of only one mode of transportation, such special delivery requirements may be included in f.o.b. destination purchase documents without prior referral to appropriate MTMTS (Military Traffic Management and Terminal Service Area Command).

(b) *Contract Modification: f.o.b. Destination of f.o.b. Origin.* Where it becomes necessary to control the method of transportation under an f.o.b. destination contract, and numerous changes are likely to be made, time permitting, the contracting officer shall issue a contract modification changing the place of delivery to f.o.b. origin and shall make an appropriate

downward adjustment in the contract price.

(c) *Modification of f.o.b. Destination Contracts to Specify Transportation Method.* Ordinarily changes in destination or advancement of delivery date under f.o.b. destination contracts will be made by contract modifications which set forth the new destination or delivery date and adjust the contract price as necessary to reflect any increase or decrease in cost to the contractor. If it is also necessary to specify a particular method of transportation, it is imperative that contracting officers consult the appropriate MTMTS office (see § 737.19-301 and NAVSUP Manual, Vol. V) for advice relative to the method of transportation, which shall be stated in the contract modification.

(d) *Dispatch and Oral Instructions to Contractors.* If a shipment is extremely urgent and time does not permit prior modification of the contract to include the new destination or delivery date and method of delivery, the contracting officer (or the cognizant Field Contract Administrator, as directed or authorized by the contracting officer) may issue dispatch shipping instructions to the contractor to effect timely delivery of contract items. If time does not permit dispatch instructions, oral instructions may be given, but they shall be immediately confirmed in writing. As soon as possible, dispatch and oral instructions shall be incorporated in a contract modification, prepared in accordance with paragraph (c) of this section. Advice of military traffic management officers should be obtained prior to the issuance of dispatch or oral shipping instruction to the contractor in order that the most expeditious and economical method of transportation will be specified. Contracting officers should not specify methods of shipment without such prior consultation with MTMTS office. The basic policy and the authority in the selection of the method of transportation are stated in NAVSUP Manual, Vol. V.

(e) *Late Deliveries.* All actions taken under this § 737.19-207 shall be consistent with Part 8, Subpart F. Termination for Default and Section XXV, Production Surveillance and Reporting. Where it is evident that the contractor will be delinquent in making delivery, the procedures specified herein shall be carefully administered to ensure that the Government does not pay for premium transportation used to meet delivery dates where delivery would otherwise be late.

§ 737.19-207-1 Transportation and delivery requirements for classified procurements.

Procurements classified as Confidential or higher shall be purchased on f.o.b. origin basis when the size, bulk or quantity to be transported will require the employment of commercial transportation services. Under such circumstances these procurements shall provide for transportation at Government expense (normally on U.S. Government bills of lading). Routing instructions, when required, will be obtained from the appropriate military sources (see § 737.19-301). These are the only sources permitted to authorize commercial transportation within the Navy. Exception is made with respect to shipments via those media which shipping officers (as defined in NAVSUP Manual Par. 51056) have been delegated authority to route. Representatives may obtain assistance and advice relative to the particular mode of transportation to be employed from the appropriate military traffic management sources. See also DOD Information Security Program Regulation (DOD 5200.1-R) and Department of the Navy Supplement (OP NAVINST 5510.1D).

§ 737.19-300 Evaluation of bids and proposals.

§ 737.19-301 Transportation rates and related costs.

§ 737.19-301-1 Sources of transportation rates and related costs.

(a) Requests originating in the Naval Systems Commands for assistance on the following will be addressed to the Transportation Management Specialists assigned to the respective Systems Command:

(1) Freight rates and related transportation and handling costs.

(2) Transportation evaluations of invitations for bids and requests for proposals.

(3) Transportation evaluations of specific procurement actions or documents.

(4) All other items of transportation management concern. After review and technical interpretation, Naval Systems Command Transportation Management Specialists will, as necessary, address requests for freight rates and related costs to the sources indicated in paragraphs (b), (c), and (d) of this section.

(b) Requests for freight rates, routing, ocean transportation rates, CONUS port handling charges and related commercial costs or other information pertaining to procurement evaluations or shipment of material expected to move from a CONUS point to another CONUS point or an overseas destination (including consideration of services available from commercial carriers, the Military Airlift Command (MAC) and the Military Sealift Command (MSC) will be addressed to the cognizant Military Traffic Management and Terminal Service Area Commander as indicated in Chapter 108 of the Military Traffic Management Regulation (NAVSUPINST 4600.70, MCO P4600.14). The term "CONUS port handling charges" includes accessorial service charges such as wharfage, heavy lift, handling and unloading.

(c) Requests by Navy contracting officers for ocean transportation rates, overseas port handling charges and related information pertaining to procurement evaluations or shipment of material expected to move between overseas points or from an overseas point to CONUS will be addressed to the Navy Supply Systems Command (Transportation Systems Division). Marine Corps contracting officers shall obtain such information from the Commandant of the Marine Corps (Code LFS-2). The term "overseas port handling charges" as used above, includes accessorial service charges such as wharfage, heavy lift, handling and unloading.

(d) Requests by Navy and Marine Corps contracting officers for overseas freight rates and related costs pertaining to procurement evaluations or shipment of material expected to move between overseas points by land or commercial air will be addressed to the overseas Military Commander exercising assigned common user military operated land transportation responsibility as directed by the overseas Theater Commander concerned. This service is provided by the Army except as may be otherwise directed by the Theater Commander (Joint Service Instruction OPNAV 4640.3).

Subpart T—Administrative Matters

§ 737.20-700 Assignment of contract administration.

§ 737.20-702 Responsibilities.

§ 737.20-702-3 Contract administration office.

(a) The contract administration office shall perform all assigned contract administration functions listed in § 1.406 to the fullest extent of its capabilities and refer functions beyond its capability to its parent headquarters for performance.

(b) When feasible, the contract administration office shall perform such other contract administration functions not listed in § 1.406 as may be requested by the purchasing office. If resources are not available to perform such functions, the contract administration office shall so advise its parent headquarters and the purchasing office making the request.

§ 737.20-702-4 Project manager or procuring activity.

(a) Appropriate agreements shall be reached between the project manager or procuring activity and the applicable NAVPRO (Naval Plant Representative Office) or SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) with respect to the functions of each relative to major defense system contract where the NAVPRO or SUPSHIP is to perform functions not listed in § 1.406(c). Those functions normally performed by NAVPROs and SUPSHIPs, as listed in § 1.406(c), shall not be included in the

agreement unless withheld, supplemented, modified or clarified.

(b) The objective of the agreement is to establish a clear understanding as to which Government element is responsible for administering specific aspects of the contract. The existence of a clear understanding will minimize the possibility that duplication may occur or that a responsible element may be by-passed in providing Government direction to the contractor. Within the capability of NAVPROs and SUPSHIPSs, project managers or procuring activities shall delegate maximum authority to them to perform such functions as participation in preliminary design reviews and critical design reviews, surveillance and monitoring of development risk, standardization control, interface control, approving contract changes, trade-off studies, approval of certain Class I engineering changes, approval of specifications, etc. These functions should be included in the agreements.

(c) The guidance in paragraphs (a) and (b) of this section is also applicable for use as appropriate with non-Navy CAO's

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§ 737.20-702-5 Monitoring contractor's costs.

(a) *Introduction.* The complexities of weapons systems procurement require a high degree od competence in contract management. The objective is to assure that the items purchased by the Government are delivered on schedule for fair and reasonable prices. Becasuse of the cost and technical risks involved, the administration of weapons systems contracts usually require more knowledge and surveillance of a contractor's operation than would be required under less critical contracts. In order to insure the most efficient and economical performance of major contracts, Naval Plant Representatives (NAVPROs) and Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPs) will monitor contractor direct and indirect costs related to Government business.

(b) *Responsibility for cost monitoring.* Within each NAVPRO and SUPSHIP administering contracts with contractors who are not CWAS qualified (§ 3-10 of this title), and who are expected to have sales to the Government in excess of $25,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts an individual or organizational element shall be designated as "cost monitor." The cost monitor shall be responsible to the Head of the NAVPROSUPSHIP for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for performing reviews of contractor operations from the coordinated long range plans established by each of the team members (see paragraph (c) of this section). The purpose of this composite plan and schedule is to assure that the cost monitoring responsibilities summarized in § 737.1-406-50 are being fully implemented, and that the technical and professional expertise of the various organizational units of the NAVPRO/SUPSHIP and the Defense Contract Audit Agency (DCAA) auditor are used without duplication of effort or skills;

(2) Coordinating the performance of the cost monitoring efforts of the NAVPRO/SUPSHIP;

(3) Coordinating the cost monitoring efforts of the NAVPRO/SUPSHIP with those of the DCAA auditor;

(4) Advising the Head of the NAVPRO/SUPSHIP of situations where the contrctor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of government contracts, and recommending corrective action, including issuance of formal written notices to the contrator advising of specific costs that will not be allowed if incurred;

(5) Coordinating NAVPRO/SUPSHIP actions to assure that the procuring contracting officer, project manager, the head of a procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of government contracts;

(6) Coordinating actions to assist NAVPRO/SUPSHIP, DCAA, and other government personnel in obtaining access to pertinent contractor policies, procedures, and related financial

data, and obtaining the assistance of the Head of the NAVPRO/SUPSHIP when such access is being denied or impaired;

(7) Maintaining an inventory of NAVPRO/SUPSHIP, DCAA, and other government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concernig cost performance; and

(9) Maintaining current organizational charts of the con-tractor's operations compatible with the contractor's budgetary system.

The plan required by paragraph (b)(1) of this section must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of government/commercial work and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Reviews required by ASPR and the contracting officer must be included in the plan.

(c) *Contractor operations review*—(1) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the next best alternative is to select for review those operations that have the greatest potential for charging government contracts with significant amounts of unacceptable costs such as those resulting from inefficient and uneconomical operations. To select these cost-risk areas on a sound and orderly basis, it is first necessary that an overview be obtained of the contractor's entire operation. Prior to the beginning of each government fiscal year, the NAVPRO/SUPSHIP cost monitor should arrange for a joint meeting between NAVPRO/SUPSHIP personnel, the DCAA auditor and other directly interested government representatives to coordinate selection of the areas to be subject to the review during the coming year. Documentation and other data to be obtained for use in the selection process will include:

(i) Contractor's total budget package broken down by functions for the coming year and latest survey of the budgetary system. (DCAA auditor responsibility.)

(ii) Detailed organizational charts for the contractor's entire operation. (NAVPRO/SUPSHIP responsibility.)

(iii) An outline of the contractor's accounting system to understand the flow of costs by function. (DCAA auditor responsibility.)

(iv) The extent of government participation in the dollars attributable to the operations and cost accounts under consideration. (DCAA auditor responsibility.)

(v) A complete list of recent reviews and audits performed by the NAVPRO/SUPSHIP, the DCAA auditor, and other government representatives that would impact upon the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (NAVPRO/SUPSHIP responsibility.)

(vi) Evidence of under- and overstaffing. (NAVPRO/SUPSHIP—DCAA auditor responsibility.

(vii) Significant departures from established productivity standards, (NAVPRO/SUPSHIP responsbility.)

(viii) Major financial variances from budgets in prior years. (DCAA auditor responsibility.)

(ix) Evidences of idle or underused capacity. (NAVPRO/SUPSHIP DCAA auditor responsibility.)

(2) *Planning for reviews.* The purpose of the meeting described in paragraph (c)(1) of this section is to consider all of the data identified and develop a mutually acceptable annual plan for reviews of the contractor's operation. The plan shall provide coverage for each significant operational area of the contractor over a period of 2-3 years and shall be modified during subsequent meetings as necessary to reflect current conditions. The schedule and resource limitations of the participating organizations will be con-

sidered during preparation of the annual plan. The plan will identify the organizations having the primary responsibilities for performing the review, i.e.; the NAVPRO/SUPSHIP, DCAA, or jointly by NAVPRO/SUPSHIP and DCAA. When appropriate, the participating organizational units of the NAVPRO/SUPSHIP shall also be identified in the plan:

(i) Reviews of contractor operations involving minimal or no financial and accounting considerations will be performed by the NAVPRO/SUPSHIP and the NAVPRO/SUPSHIP will sign reports on these reviews.

(ii) Accounting and financial reviews of contractors' operations involving minimal or no technical considerations will be performed by the DCAA auditor and the auditor will sign reports on these reviews.

(iii) Other reviews involving significant technical and financial/accounting aspects will be performed jointly by the NAVPRO/SUPSHIP and DCAA and the reports on these reviews will be signed by the heads of the respective organizations.

Some operations reviews such as the purchasing and estimating system reviews are assigned to the responsible reviewing organization by ASPR. These assignments will continue to be rcognized. All others will be performed in accordance with the above criteria. The plan shall be formally approved by both the head of the NAVPRO/SUPSHIP and the head of the local DCAA Resident Office.

(d) *Joint reviews*—(1) *Objective.* The objectives of Joint NAVPRO/SUPSHIP DCAA auditor reviews of contractor operations are:

(i) To optimize the utilization of DCAA NAVPRO/SUPSHIP personnel in the performance of selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the NAVPRO/SUPSHIP to improve the effectiveness and economy of contractor operations.

(2) *DCAA auditor responsibility.* Organizationally, the DCAA is separate from, and independent of purchase and contract administration offices. DCAA auditors are professionals trained in accounting, auditing, and financial matters, DCAA functions and relationships are set forth in §§ 737.1-407 and 737.1-408. Briefly, DCAA audit offices are responsible for performing all necessary contract audit for DOD and providing accounting and financial advisory services regarding contracts and subcontracts to all DOD components responsible for procurement and contract administration. Section 3-801.5 of this title, Responsibility of Field Pricing Support Personnel, provides that the auditor is responsible for submission of information and advice based on his analysis of the contractor's books and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs. It also states that the auditor is responsible for performing that part of reviews and cost analysis which requires access to the contractor's books and financial records supporting proposed costs or pricing costs or pricing data regardless of the dollar amount involved. Finally, it provides that only the auditor shall have general access to the contractor's financial books and records for this purpose. The NAVPRO/SUPSHIP will utilize the auditor's services whenever such expertise is needed; particularly in regard to the contractor's financial management reports, books, and records. The auditor will be responsible for reviewing the financial and accounting aspects of the contrator's budgetary system.

(3) *Differences.* The finding, conclusions, and recommendations resulting from joint reviews shall be mutually agreed upon by the NAVPRO or SUPSHIP and the Resident Auditor. In those instances where Navy and DCAA field personnel are unable to resolve, among themselves, differences of opinion on significant joint report findings, conclusions, and recommendations, report copies with pertinent explanation shall be forwarded simultaneously to NAVMAT and DCAA Headquarters, via channels, for advice.

(4) *Exit conference with contractor.* During the course of the review there may be several information briefings with contractor management personnel to exchange information. Every

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opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconception that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain NAVPRO/SUPSHIP and DCAA findings, conclusions, and recommendations.

(5) *Reports on joint reviews.* Reports on joint reviews of contractor's operations shall be prepared for submission to the contractor by the DCAA auditor and the NAVPRO or SUPSHIP and signed by the heads of both offices. Joint review reports shall be submitted to the contractor by an accompanying transmittal letter signed by the Head of the NAVPRO/SUPSHIP. To the maximum practical extent, the report will be prepared in the following format:

Cover page.
Table of contents.
Summary (see (A) below).
  Background of operational area reviewed.
  Purpose of review.
  Scope of review.
  Summary evaluation.
Statement of conditions and recommendations (see (B) below).
Status of corrective action taken regarding prior recommendations (see (C) below).
Concluding remarks (see (D)).
Exhibits and schedules (see (E) below).

(a) *Summary*—(i) *Background of operational area reviewed.* The background paragraph should provide information regarding the area under review. It should indicate the overall significance of the area and the related government participation or interest therein, a mission statement where appropriate, and any other background data which may impact the review, such as recent contractor reorganizations in the area being reviewed, major changes in operating procedures, major changes in volume or mix of business, major contract awards or terminations affecting the area, observations or disclosures from other reviews, and other similar background data as appropriate.

(ii) *Purpose of review.* The purpose paragraph will clearly identify the particular area reviewed, the purpose, and the period reviewed. This paragraph will also include the following restriction on report release: "This report may not be released to any Federal agency outside the Department of Defense without prior approval of the signatories except where an agency requests the report in connection with the negotiation or administration of a contract by the agency."

(iii) *Scope of review.* The scope paragraph should normally include a standard phrase such as the following: "The financial aspects of this joint review were performed in accordance with generally accepted auditing standards and included such tests of accounting records and other auditing procedures as were considered necessary in the circumstances. In addition, the scope of the technical review should also be stated. Where pertinent, the paragraph may also identify any relevant contractor records, documents, policies, and procedures examined, and special techniques used such as: statistical sampling, regression analysis, ration delay, etc. Any factors which restricted the scope of the review should also be clearly stated.

(iv) *Summary evaluation.* One of the principal objectives of the report is to adequately expose any significant adverse conditions found during the review to insure that necessary corrective action is taken. Accordingly, the summary evaluation should include a brief, pointed statement on the overall results of the evaluation. Specific favorable internal controls or contractor procedures should be recognized but particular emphasis should be placed on those conditions where improvement is needed. This paragraph should also include a brief summary of the effect (dollar or other) of the conditions and their underlying causes. The summary conclusions should relate to and be consistent to have, at the same time, a long list of significant deficiences and an overall favorable conclusion. The summary evaluation should be presented in clear, concise, and specific terms so that the reader will not have to make arbitrary, possibly erroneous, deductions or assumptions, about the conclusions.

(B) *Statement of conditions and recommendations.* A comprehensive statement of conditions and recommendations for corrective action is required for each deficiency or weakness found and should be presented as follows:

TITLE OF SUBJECT/AREA TO BE DISCUSSED

(i) *Statement of condition.* The conditions found during the review should be clearly described. Specific examples of adverse conditions should be included. The scope of the examination and the result of any tests made should be described in sufficiently precise terms. Time periods of the tests should be highlighted if deficiences are more prevalent during certain timeframes. The criteria that the receiver used as a basis for comparison with the actual condition should be described sufficiently to permit the reader to grasp the significance of finding. The cause or the underlying reasons for

the conditions should be explained as specifically as possible.

(ii) *Cost impact.* The effect of the adverse conditions on government contracts in terms of dollar amounts should be shown whenever possible. It is recognized that there may be times when dollar impacts are not discernible. When actual dollar amounts are not available, the reasons for such unavailability should be explained, and reasonable estimates should be used wherever possible. In brief, the report should indicate clearly and specifically what the reviewer considers the effect to be in the circumstances.

(iii) *Recommendations addressed to the contractor.* The recommendations should be a natural and logical fallout of the preceding paragraphs. Recommendations should be constructive in nature and as definitive as the situation warrants. The reviewer need not solve all procedural or functional problems but should indicate at least the framework for resolving the deficiency. It may be appropriate in certain complex situations to recommend that the contractor, with its resources, undertake a study directed toward remedying the deficiency.

(iv) *Contractor's reaction.* The contractor's reaction, as obtained during interim discussions or the exit conference (d)(4), should be noted as well as whether the contractor has agreed to undertake appropriate corrective measures. If the contractor is not prepared to furnish authoritative comments on the review findings at the time of the exit conference, it is considered appropriate to furnish a preliminary draft copy of the report to the contractor in order for him to fully understand the findings and recommendations. A reasonable timeframe (usually 2 weeks to 30 days) should be established for the contractor's reply. Reports should not be held beyond the agreed-to deadline for receipt of the contractor's reaction.

(v) *Reviewer's rejoinder.* Any factual matters raised by the contractor's comments or reply should be included in the statement of condition. The extent to which the contractor concurs with the findings and recommendations and the contractors proposed action should also be discussed.

(C) *Status of corrective action taken on prior recommendations.* This paragraph should show the status of corrective action taken by the contractor on recommendations made in prior reports on the same functional area. The paragraph should include a determination by the reviewer as to whether the corrective action taken is adequate. If corrective action is inadequate or has not been taken, the recommendation should be restated or a reference made to the updated discussion of the matter in the present report.

(D) *Concluding remarks.* This paragraph should be used to suggest specific time periods for corrective action on any report recommendations or other comments as appropriate. The report should be signed at the end of the narrative section of the report by both the Head of the NAVPRO/SUPSHIP and the head of the local DCAA Resident Office.

(E) *Exhibits and schedules.* Reports should contain any exhibits and supporting schedules necessary for adequate support of the review findings and a clear understanding of the recommendations. The contractor's operating and financial statements and pertinent excerpts from the contractor's policies and procedures may be included as exhibits in those circumstances where they will contribute to an understanding of the report.

(e) *Reports issued by NAVPROS or SUPSHIPS.* Reports issued solely by the NAVPRO/SUPSHIP will be prepared generally in accordance with paragraph (d)(5) above except when regulations provide otherwise.

(f) *Recommendations to Government activities.* NAVPRO/SUPSHIP findings resulting in recommendations to named government activities will be the subject of a separate report signed by the Head of the NAVPRO/SUPSHIP and forwarded through channels to the activities addressed in the recommendation.

[41 FR 55517, Dec. 21, 1976]

§ 737.20-702-6 Responsibilities of NAVPROs and SUPSHIPs for allowability of costs under cost-reimbursement type contracts.

(a) The cognizant NAVPRO (Naval Plant Representative Office) or SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair), assisted by the DCAA (Defense Contract Audit Agency) auditor, has final responsibility for determining whether costs incurred under cost-reimbursement type contracts are reasonable, allocable, and otherwise allowable.

(b) Section 3.809(c) designates the auditor as the authorized representative of the contracting officer for examining contract costs for the purpose of determining allowable direct and indirect costs under Part 15, Contract Cost Principles and Procedures, except for negotiated overhead rates (§ 3.700). During performance of the contract, the auditor processes vouchers for provisional payment subject to final audit. At completion of the contract, the auditor forwards the completion voucher to the NAVPRO/SUPSHIP

accompanied by the final audit report which summarizes all costs incurred and considered allowable from the inception to the completion of the contract. The NAVPRO/SUPSHIP shall approve the final voucher for the final payment after assuring that the contractor has fully complied with all provisions of the contract.

(c) The auditor issues DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, with a copy to the NAVPRO/SUPSHIP, with respect to costs claimed but not considered allowable. The auditor is required to discuss controversial disallowances with the NAVPRO/SUPSHIP, prior to issuing the DCAA Form 1. Section 1.406(c)(iv) requires that the contract administration office determine, upon written appeal by the contractor, the allowability of costs suspended or disapproved by the auditor.

(d) During the period of contract performance, the NAVPRO/SUPSHIP is responsible for the performance of contract administration functions listed in § 1.406 and § 737.1-406-50. In the day-to-day performance of these functions, NAVPRO/SUPSHIP personnel should be alert to inefficient and uneconomical policies and practices being followed by the contractor that can result in the incurrence of unnecessary costs. If sufficient information is available to indicate that a contractor's practice is causing unnecessary contract costs, the NAVPRO/SUPSHIP shall direct the issuance of the DCAA Form 1 by the auditor for the suspension or disapproval of costs incurred, as provided by § 3.809(c)(i). Where the NAVPRO/SUPSHIP believes that unnecessary costs are being incurred by a contractor, and requires audit assistance, available information should be coordinated with the auditor, and the NAVPRO/SUPSHIP should request specific audit coverage of the functional area involved.

§ 737.20-702-7 Review of contractor's ADP (Automatic Data Processing) operations.

(a) *NAVPRO/SUPSHIP responsibility.* Each NAVPRO (Naval Plant Representative Office) and SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) administering contracts with contractors expected to have sales to the Government in excess of $5,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts shall review the contractor's ADP operations periodically to assure that they are effective and economical. This review should be combined with a review required by § 3-1100.2 of this title and shall include a review of the end products of contractor's ADP equipment, and the data that might be produced by such equipment. The plan and schedule for the review must be tailored to the contractor concerned, taking into account the requirements of § 3-1100 of this title, the extent of competition in contracts being performed, the contractor's operating methods, the nature of the work being done, procurement cycle states, types of contracts involved, degree of technical and financial risk, ration of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Review teams shall be headed by a representative of the NAVPRO/SUPSHIP and shall include as necessary one or more ADPE specialists provided by the Systems Command, one or more DCAA auditors, and appropriate NAVPRO/SUPSHIP personnel.

(b) *NAVAIR/NAVSEA responsibility.* The Commander, Naval Air Systems Command (NAVAIR) and the Commander, Naval Sea Systems Command (NAVSEA) shall provide necessary technical assistance to NAVPROs and/or SUPSHIPs managed by them, to conduct the reviews required by paragraph (a) of this section as well as the review required by § 3-1100.2 of this title applicable to contractor acquisition of ADPE. NAVAIR or NAVSEA shall also provide necessary technical assistance required by § 3-1100.2(c) of this title to Defense Contract Administration Services activities cognizant of contractors having a preponderance of Navy unexpended contract dollars. The selection of

NAVAIR or NAVSEA to provide this service will be determined on the basis of preponderance of unexpended NAVAIR or NAVSEA contract dollars in contracts held by the contractor.

[41 FR 55519, Dec. 21, 1976]

§ 737.20-706 Designation of the disbursing office.

§ 737.20-706-51 Other military department disbursing offices.

Contracts citing appropriations or funds of the Departments of the Army or the Air Force or of other DOD agencies will designate the appropriate finance offices of those Departments as specified in the applicable MIPRs. Contracts chargeable to the appropriations or funds of more than one Military Department will designate a disbursing or financing office of each Department involved to disburse the appropriations of the Department, except that when such contracts are for research and development, a disbursing office of the procuring Department may be designated to make all payments.

§ 737.20-706-52 Navy disbursing offices.

(a) *General.* All contracts citing Navy appropriations which are not assigned to a Defense Contract Administration Services Regional Office for administration shall designate the appropriate Navy disbursing office to make payments against Navy appropriations. Except as otherwise provided in paragraphs (b) through (h) of this section; one of the disbursing offices listed herein shall be designated. In contracts providing for inspection and acceptance of items by the Navy at the contractor's plant, the Navy regional finance center (NRFC) serving the area in which the contractor's plant is located shall be designated as the paying office in the contract. In contracts providing for inspection and acceptance at a point other than the contractor's plant, the Navy regional finance center serving the area in which the receiving activity is located shall be designated as the paying office in the contract; except that if the contract provides for inspection and acceptance at more than one destination point or at a destination point outside the continental United States, the Navy regional finance center serving the area in which the principal office of the contractor (the office to which delivery of the check is to be made) is located shall be designated as the paying office in the contract. See NavCompt Manual, par. 046300. Exceptions to the foregoing are made in the case of certain orders issued by bureaus, systems commands and inventory control points as provided for in NavCompt Manual, par. 064006-3.

Disbursing office	Area served
NRFC Washington, D.C.	District of Columbia, Maryland and counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, King George, Loudoun, Page, Prince William, Rappahannock, Shenandoah, Stafford, Warren and Westmoreland, and the cities of Alexandria and Fairfax in Virginia.
NRFC Norfolk, Va.	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, except the areas served by the NRFC, Washington, D.C.; West Virginia, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, and Mississippi.
NRFC Great Lakes, Ill.	North Dakota, South Dakota, Wyoming, Nebraska, Colorado, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Michigan, Illinois, Indiana, Ohio, Kentucky, Arkansas, Louisiana, Oklahoma and Texas.
NRFC San Diego, Calif.	Southern part of California including the Counties of Santa Barbara, Kern and San Bernardino and all counties south thereof, Arizona and New Mexico and Clark County, Nevada.
NRFC San Francisco, Calif.	Northern part of California, including counties of San Luis Obispo, Kings, Tulare, Inyo and all counties north thereof, Utah, Nevada (except Clark County), Washington, Oregon, Montana, Idaho and Alaska.
NFO Pearl Harbor, Hawaii.	Hawaii.

(b) *Contracts Citing the Appropriation 17X4912, Navy Industrial Fund.* Except as provided in paragraph (c) of this section, when the contract is chargeable to the Navy Industrial Fund, the disbursing office will be the applicable Navy Industrial Fund activity if so cited on the requisition. Otherwise, the appropriate disbursing office listed in paragraph (a) of this section will be designated.

(c) *Contracts for Petroleum Products.* (1) Except for the Military Sealift Command, Navy Industrial Fund activities regularly paying their own dealers: Bills will designate payment by their own disbursing office. Orders for petroleum for Military Sealift Command vessels will provide for payment by the disbursing office of the Military Sealift Command activity to which the ship is assigned, except that orders for petroleum products used as bunkers on government owned tankers administratively assigned to the Military Sealift Command and operated under a cost-plus-a-fixed-fee contract will provide for payment by the Commander, Military Sealift Command, Washington, D.C. when the charge is against a Navy Industrial Fund activity not regularly paying its own dealers' bills or against any other Navy appropriation, orders will provide for payment by the appropriate office specified in paragraph (c)(2) of this section.

(2) Except as otherwise provided by amendment to the general provisions for petroleum products, the following paying procedures apply to all deliveries:

(i) The ordering activity will designate NRFC San Francisco as the paying office if delivery is made within Arizona, New Mexico, California, Oregon, Washington, Montana, Idaho, Nevada, Utah, Wyoming or Colorado, or, if the home office of the contractor is located in any such state and deliveries are made in those states, including deliveries outside those states under the same delivery orders.

(ii) The ordering activity will designate NRFC Washington as the paying office for all other deliveries. Contracts for into-plane deliveries will designate payment by Defense Supply Agency Administrative Support Center, DCASC-MF, Cameron Station, Alexandria, VA 22314.

(3) Only one paying office will be designated on each order.

(d) *Contracts for Solid Fuels.* When coal is procured under contracts specifying delivery direct from designated mines, NRFC Washington will be designated the paying office except when charge is to the Navy Industrial Fund and the disbursing office serving the Navy Industrial Fund activity is designated in the requisition. When coal is procured from retail distributors the disbursing office will be selected in accordance with paragraphs (a) and (b) or (g) of this section as appropriate.

(e) *Ship's Store Stock.* An east coast and a west coast disbursing office have been assigned the function of payment of dealer's bills for all ship's store items which are listed in the Ship's Store Afloat Stock Catalog. NRFC Norfolk is the east coast office and NRFC San Francisco is the west coast office.

(f) *Overseas Navy Commissary Store Merchandise.* Fast Pay or Certificate of Conformance purchases of commissary store merchandise to be shipped via a continental United States transhipping activity will specify payment by NRFC Norfolk when shipment is via an east coast transhipping activity and NRFC San Francisco when shipment is via a west coast transhipping activity.

(g) *Contracts with Contractors outside the United States.* Except when payment is to be made by a DCASR in accordance with § 737.20-706-50 or by a Navy disbursing office in Canada, contracts providing for payment in Canadian dollars will designate NRFC Washington as the paying office. In all other cases, contracts with contractors outside the United States will designate the disbursing office serving the receiving activity to make payment.

(h) *Superintendent of Documents.* All orders on the Superintendent of Documents will designate NRFC Washington as the paying office and billings will be submitted directly to that office as provided in NavCompt Manual, par. 046301-2c.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55519, Dec. 21, 1976]

§ 737.20-802-8 Responsibilities of NAVPROs and SUPSHIPs for deobligation of unexpended dollar balances considered excess to known contractor requirements.

(a) *Responsibility.* NAVPROs (Naval Plant Representative Office) and SUPSHIPS (Supervisors of Shipbuilding, Conversion and Repair) shall monitor contract funding in order to determine

when excess funds are available for deobligation.

(b) *Procedures.* (1) Contractually required reports, including Contract Funds Status Report (DD Form 1556) and the report required by the Limitation of Cost clauses, shall be examined to determine if there are excess contract funds. Also, when work under a contract or contract line item is physically completed, or has lapsed, a review shall be made to determine if there are any excess funds.

(2) When the determination has been made that unexpended dollar balances are excess to known contract requirements, the NAVPRO/SUPSHIP shall obtain a statement from the contractor as to the exact amount available for deobligation.

(3) When authorized by § 737.26–102 or the purchasing office (see § 1–406(c)(lviii) to this title) the NAVPRO/SUPSHIP will execute a bilateral contract modification releasing excess funds. Otherwise the NAVPRO/SUPSHIP shall provide a report of excess funds to the purchasing office, which may either modify the contract or authorize the NAVPRO/SUPSHIP to do so.

(4) In preparing modifications deobligating funds under contracts involving multiple account classifications, NAVPRO/SUPSHIP may find it necessary to obtain a record of Navy payments by accounting classifications in order to determine which accounting classifications to credit. This information is available on a specific request basis from the AAA (Authorized Accounting Activity), which can be identified by the six digit code in the accounting classification and reference to the index of these codes in the NAVCOMPT Manual, Volume II, Chapter 5.

(5) Should a deobligation by a NAVPRO/SUPSHIP be later determined to have been excessive, the NAVPRO/SUPSHIP shall obtain the required funds from or through the purchasing office and modify the contract accordingly.

[41 FR 55519, Dec. 21, 1976]

§ 737.20–900 Corporate Administrative Contracting Officer (CACO).

§ 737.20–901 General.

(a) Part 20, Subpart H, provides policy and procedures for the assignment of a Corporate Administrative Contracting Officer (CACO) and the duties and responsibilities of a CACO. A CACO will be established when the corporate structure is such that multidivisional policy and procedures require ACO review and approval and where the corporation retains the authority for decision-making in these areas.

(b) Recommendations for appointment of a CACO shall be submitted by a Contract Administration Office (CAO) via appropriate channels to the Chief of Naval Material for those applicable contractors assigned to Navy under the Plant Cognizance Program. The Chief of Naval Material will coordinate the recommendations with the Army, Air Force or Defense Supply Agency/CAS, as applicable. If the decision is for the Navy to assume the CACO responsibilities, the Chief of Naval Material will notify the parent organization of the CAO so that immediate action may be taken by that organization to select and appoint, in writing, an individual as the CACO. A copy of the appointment letter shall be provided Headquarters, Defense Supply Agency, Attention DCAS–J, for listing of the CACO in the DOD Directory of Contract Administration Services Components (DOD 4105.59–H). The parent organization shall also advise the contractor of the designation.

(c) Regardless of the DOD component affiliation of the CACO, participation in the CACO program is required for CAOs at lower organizational segments of the contractor. Accordingly, affected Navy CAOs will designate an ACO as the Divisional ACO (DACO) for participation in the CACO program.

§ 737.20–904 Duties and responsibilities of corporate ACO.

(a) The duties and responsibilities of the CACO are set forth in Part 20, Subpart H. Performance of such

duties and responsibilities may include, among others:

(1) The review of contractor corporate policies and procedures, particularly as they relate to the incurrence of costs and the allocation thereof to government contracts or to costs generated at the corporate level and allocated to divisions, profit centers, etc. Items subject to such review may include, for example:

(i) Corporate home office expenses and divisional allocation;

(ii) Travel and per diem;

(iii) Relocation expenses;

(iv) Compensation program, including wages and salaries, overtime, pension plans, severance pay, bonus or incentive plans;

(v) Leasing policies;

(vi) Insurance programs;

(vii) Advance understandings on particular cost items;

(viii) Determining the adequacy of corporate Disclosure Statements under the Cost Accounting Standards;

(ix) Requesting the appointment of Divisional ACOs;

(x) IR&D expenses policy;

(xi) Processing and executing novation agreements;

(xii) Patent and royalty;

(xiii) Lease versus purchase of ADP Equipment Analysis;

(xiv) Contractor's Weighted Average Share (CWAS) rating;

(xv) Termination policy;

(xvi) Compliance with cost accounting standards and disclosed practices;

(xvii) Negotiating and entering into forward pricing rate agreements for home office expenses;

(xviii) Property and disposal policy; and

(xix) Departmental tri-service negotiations, as requested.

(2) Providing to the DACOs pertinent reports of CACO review, negotiations and approvals or disapprovals. The rate and allocations so reported are not subject to further negotiation or audit determination at the DACO level.

(3) Conducting meetings as needed, normally not less frequently than on an annual basis; such meetings to be attended by interested CAO personnel, DACOs, contracting officers at interested purchasing offices, and Defense Contract Audit Agency personnel for discussion and resolution of contractual matters that have inter-divisional implications. When appropriate, representatives of other government organizations shall be invited. However, the total number of conferees should be kept to a practical minimum. A summary report of each meeting shall be furnished to the conference participants within 30 days after the close of the conference.

(4) Maintaining such communication with DACOs as necessary to provide pertinent information as to corporate development and acquiring knowledge of DACO problems and developments having corporation-wide impact.

(5) In accomplishing the above or other official duties, CACOs will be performing at the corporate level appropriate ACO authorities and responsibilities as set forth in § 1.406. In so doing, the CACO shall not duplicate audit functions set forth in § 737.1–407. Normally, a CAC (Corporate Audit Coordinator) is assigned by DCAA to the corporate level. In such instances, the CACO shall:

(i) Coordinate with the CAC in presenting and resolving with the contractor, corporate-wide problems of mutual interest;

(ii) Attend CAC conferences and disseminating the results of such conferences to DACO;

(iii) Invite the CAC to attend appropriate CACO meetings;

(iv) Inform the CAC of all major actions, policies, and/or agreements resulting from the CACO program.

§ 737.20–905 Responsibilities of divisional ACO (DACO).

(a) A Divisional ACO shall follow a policy of full disclosure and support to the CACO program. DACOs shall provide the CACO with:

(1) Copies of any reports requested or considered pertinent for CACO consideration or action.

(2) Complete information concerning any local problem areas which:

(i) May also exist within the CACO complex, or

(ii) Cannot be solved locally.

§ 737.20-906 Agreements.

A written agreement between the CACO and each DACO shall be prepared by the CACO. The agreements shall identify and specify each function to be performed by the CACO and the DACO. Agreements shall be executed within 90 days after the CACO is established.

Subpart U—Procurement Management Reporting System

§ 737.21-100 Individual procurement action report (DD Form 350).

§ 737.21-101 Preparation of DD Form 350.

§ 737.21-101-1 Coding.

The following coding shall be used for the DD Form 350 Items indicated:

(a) *Item 1B. General.* Entries in this block serve to identify procurement actions executed by field contract administration offices or the section, branch or division responsible for procurement awards executed by certain Headquarters purchase organizations.

(1) *Field Contract Administration Office Procurement Actions Only.* Enter alpha code "F" in Item 1B for all procurement actions executed by a field contract administration office listed in the DOD Directory of Contract Administration Services Components (DOD 4105.59-H).

(2) *Headquarters, Naval Sea Systems Command, Naval Air Systems Command and Naval Electronic Systems Command Procurement Actions Only.* Enter a one-digit alpha or numeric code to identify the NAVSEA 02, NAVAIR 02 or NAVELEX 02 Section, Branch or Division responsible for the procurement action being reported. The three affected commands will select their own codes and determine the extent of the breakdown, i.e., whether to report Divisions only or to report Branches and Sections. These three commands shall submit a list of the Divisions, Branches and Sections and related codes, and all subsequent additions and deletions, to the Chief of Naval Material (MAT 0214).

(b) *Item 2B, Department.* Enter a single capital letter to identify "Department" in accordance with the following table:

N—Navy
M—Marine Corps
A—Army
F—Air Force
P—Government Printing Office
G—General Services Administration
D—Office of the Secretary of Defense and Defense Agencies other than the Defense Supply Agency
S—Defense Supply Agency
X—All others

(c) *Item 2E.* Enter one of the following alpha codes for Kind of Procurement Action Codes 4, 6, and 8:

(1) Code P—Action fully priced at time of issuance.

(2) Code N—Action not fully priced at time of issuance, and contractor not obligated to total performance for a maximum dollar amount.

(3) Code C—Action not fully priced at time of issuance, but contractor obligated to total performance for a maximum dollar amount.

(4) Code S—Action fully priced superseding a not fully priced action.

(d) *Item 22, Date of this Action and Item 23, Estimated Completion Date.* Enter alpha-numeric codes to indicate month and *calendar* year. Codes and examples are:

Months: A—Jan, B—Feb, C—Mar, D—Apr, E—May, F—Jun, G—Jul, H—Aug, I—Sep, J—Oct, K—Nov, L—Dec.
Calendar Years: 6—1976, 5—1975, 4—1974.

Example: Date of this Action, 22 August 1974, would be coded H/4/22

Example: Estimated Completion Date, May 1976, would be coded E/6

(e) *Item 24A, Procurement Administrative Leadtime.* Enter the number of elapsed calendar days from the date the Procurement Request was received in Contracts in a form that it could be processed until the date the award was made. Example: The Procurement Request was received on 10 January 1974, and the award was made on 2 July 1974. The entry in Item 24A would be "173" for the elapsed calendar days. Entry in Item 24A applies only to Definitive Contracts, i.e., those that are shown as Code 3 in Item 14 on DD Form 350.

(f) Report Control Symbol DD-I&L (M) 1014 applies.

§ 737.21-102 Preparation of reports of undefinitized change orders.

[41 FR 55519, Dec. 2, 1976]

§ 732.21-102-1 General.

The backlog of undefinitized changes and unpriced orders constitutes a blank check to contractors and is a contingent liability against the government. In order to maintain the integrity of the basic contract agreement, as well as to minimize government risk, timely definitization is required. Reports of Undefinitized Change Orders and Unpriced Orders are designed to provide the Chief of Naval Material with a dollar and action profile of each the systems commands in summary form. However, Heads of Procuring Activities are expected to have information from the activities reporting to them in much greater depth than the summary reports so they can readily furnish the Chief of Naval Material pertinent details in such areas as backlogs in individual activities, their goals for reducing the backlogs, reasons for fluctuations, pricing/definitization progress for outstanding actions and other data of similar import, should the need arise.

[41 FR 55519, Dec. 21, 1976]

§ 737.21-102-2 Head of procuring activity action.

(a) *Reporting responsibility.* Heads of Procuring Activities, with the exception of the U.S. Marine Corps which submits reports directly to ASD(I&L), shall prepare and forward consolidated reports on Undefinitized Change Orders and Unpriced Order backlogs for Department of the Navy purchasing office and contract administration offices under their cognizance. The Commander, Naval Supply Systems Command will report on the Navy Inventory Control Points and other activities of the Navy Field Procurement System. Only those procurement actions estimated to exceed $10,000 are to be reported.

(b) *Treatment of procurement actions for which DCAS, U.S. Air Force and others have responsibility for executing priced supplemental agreements.* These procurement actions will be included in the Report of Undefinitized Change Orders; they will be excluded from the Unpriced Order Report.

(c) *Reporting procedures and submission schedules.* Report shall cover the periods ending June 30, September 30, December 31, and March 31, respectively. They shall be submitted to the Chief of Naval Material (MAT 0214) within 20 calendar days after the end of each reporting period.

(d) *Report format.* Quarterly reports shall be submitted on Exhibit A which is contained in § 737.21-102-3. When Exhibit A is reproduced, the notes may be deleted.

(e) *Report control symbol.* RCS DD-I&L(Q)1119(5200) applies.

[41 FR 55520, Dec. 21, 1976]

§ 737.21-102-3 Preparation of reports of Undefinitized Change Order, DD-I&L(Q)1119(5200) Format A.

(a) *Definition—Undefinitized change order.* For the purpose of this report an Undefinitized Change Order is any of the following modification for which a final equitable adjustment in contract price or cost remains to be negotiated:

(1) Change Orders § 1-201.1 of this title; issued pursuant to the Changes clause, or to other clauses of the contract invoking the Changes clause procedures;

(2) Supplemental Agreements used in preference to a change order when the authority to accomplish the modification is the Change clause; or

(3) Other Supplemental Agreements used to reflect other agreements of the parties modifying the terms of the contract.

(4) *Exceptions.* Changes and other modifications to letter contracts; contract modifications for provisioned and other items; Orders under Basic Ordering Agreements (BOA's); and Job Orders under Master Contracts for the Repair and Alteration of Vessels. None of these will be reported as Undefinitized Change Orders.

(b) *Applicability and coverage.* Quarterly reports of Undefinitized Change Orders shall be prepared for all undefinitized change orders over $10,000 issued by each Department of

the Navy purchasing and contract administration office, and by DCAS, U.S. Air Force or U.S. Army administration office acting on behalf of Navy purchasing offices.

(c) *Dollar values reported.* The dollar value of an Undefinitized Change Order is the amount obligated, or deobligated.

(d) *Aging.* The age of an Undefinitized Change Order is calculated from the first of the month following the month the order was issued by the contracting office. Example: Order issued April 10; aging begins May 1.

[41 FR 55520, Dec. 21, 1976]

§ 737.21-102-4 Preparation of report of Unpriced Orders, DD-I&L(Q)1119 (5200).

(a) *Definition—Unpriced order.* For the purpose of this report, an Unpriced Order is any of the following procurement actions in which the provisioning or other terms of the contract or agreement authorize the contracting officer/ordering activity to place orders for which firm prices will be negotiated at a subsequent date:

(1) Orders under Basic Ordering Agreement (BOA's);

(2) Job Orders under Master Contracts for the Repair and Alteration of Vessels; or

(3) Contract modifications requiring the contractor to furnish such items as spare parts, support equipment, technical manuals, supplies, repairs, services, etc.;

(4) Exceptions. No letter contracts, or modifications under letter contracts, shall be included in the Report of Unpriced Orders.

(b) *Applicability and coverage.* Quarterly Reports of Unpriced Orders shall be prepared on each action over $10,000 and summarized for Navy purchasing and contract administration offices. Actions under the cognizance of DCAS, U.S. Air Force or U.S. Army administration offices shall be excluded from this report.

(c) *Dollar values reported.* Paragraph (c) of § 737.21-102-3 applies.

(d) *Aging.* Paragraph (d) of § 737.21-102-3 applies.

(e) *Format for report of undefinitized change orders and unpriced orders for the period ending.*

EXHIBIT A

_____ REPORT OF UNDEFINITIZED CHANGE ORDERS AND UNPRICED ORDERS FOR THE PERIOD ENDING _____

(SYSCOM)

RCS DD-I&L(Q)1119(5200)

*UNDEFINITIZED CHANGE ORDERS	(1) ON HAND BEGINNING OF PERIOD		(2) ISSUED DURING PERIOD		(3) ON HAND END OF PERIOD		(4) LESS THAN SIX MONTHS		(5) SIX MONTHS TO TWELVE MONTHS		(6) MORE THAN TWELVE MONTHS	
	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS
N SUPSHIPS (SEA use only)												
A NAVPROS (AIR & SEA use only)												
V HDOSYSCOM 02 (AIR, SEA & ELEX use only)												
Y TOTAL (For use of all SYSCOMS)												
DCAS												
AIR FORCE												
ARMY												
TOTAL												
**UNPRICED ORDERS												
N SUPSHIPS (SEA use only)												
A NAVPROS (AIR & SEA use only)												
V HDOSYSCOM 02 (AIR, SEA & ELEX use only)												
Y TOTAL (For use of All SYSCOMS)												

*Notes on Preparing Report on Undefinitized Change Orders (Notes may be deleted when form is reproduced)

(a) Balances appearing in column (1), On Hand Beginning of Period, on this report shall agree with those appearing in column (3), On Hand End of Period, for the previous period.

(b) The sum of actions and dollars in columns (1) and (2) shall not be less than the actions and dollar totals in column (3).

(c) The sum of actions and dollars in columns (4), (5) and (6) shall equal the actions and dollar totals in column (3).

(d) The dollar value of undefinitized change orders shall be the amount obligated.

(e) Exceptions noted in NPD 21-16.3(a)(iv) shall not be included in this report.

(f) All dollar values shall be treated as additions, whether they are increases or decreases, e.g.

Order No. 1 plus	$100
Order No. 2 minus	50
Order No. 3 plus	50
Total	$200

**Notes on Preparing Report on Unpriced Orders

Notes (a) through (e) for reporting undefinitized Change Orders likewise apply to Unpriced Orders, except that the NPD reference on Note (e) is NPD 21-107.4(a)(iv).

[41 FR 55520, Dec. 21, 1976]

§ 737.21-103 Preparation of letter contract report.

[41 FR 55520, Dec. 21, 1976]

§ 737.21-103-1 Reporting letter contract status.

(a) A quarterly Letter Contract Report shall be submitted to the Chief of Naval Material (MAT 0214) not later than the 10th working day after the end of the quarter. The Commander, Naval Supply System Command will report on the Navy Inventory Control Points and other activities of the Navy Field Procurement System. The report consists of three parts:

(1) Part 1, NAVMAT Form 4330/2 (Rev. 5-66), is the basic report listing all outstanding letter contracts and those that have been definitized during the reporting quarter. Preparation requires that appropriate information be shown in columns 1 through 10 for each letter contract. The dollar value of a letter contract shall include all modifications. Such modifications shall be treated as additions to the initial award and shall not be reported as separate line item entries on NAVMAT Form 4330/2. Data appearing in columns 1, 2, 3, and 6 shall remain the same for the life of the letter contract; information in columns 4, 5, 7, 8, and 9 shall be updated, when appropriate. Column 10 shall not be filled until the definitive con-

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tract has been signed by both parties. Once the definitization date has been entered in column 10, the item shall no longer be reported. Letter contracts that have been definitized during the quarter should appear last on the report. NAVMAT Form 4330/2 need be submitted in original only.

(2) Part 2, NAVMAT Form 4330/3 (9-68), serves the dual purpose of reporting current status of definitization of letter contracts aged 6 months or more and stating what has transpired in the past affecting definitization progress. In the space entitled "Detailed Reasons Why Contract Has Not Been Definitized," the explanation should be given in chronological form so that there is a clear outline of sequential actions. In the space entitled "Present Status," a one-line statement of status as of the end of the reporting quarter will be sufficient. NAVMAT Form 4330/3 need be submitted in original only.

(3) Part 3, NAVMAT Form 4330/27(2-70), is a one-time report that shall be submitted on each newly awarded letter contract the first time the award is listed on NAVMAT Form 4330/2. The report is required in an original only, except where clearance must be obtained from the Chief of Naval Material (MAT 022). In such instances, the original of NAVMAT Form 4330/27 shall be furnished MAT 022 and a copy shall be included in the quarterly report to MAT 0214. The negotiation authority for the letter contract shall be indicated in parenthesis in Part II of this Form near the right-hand margin on the line provided for the Letter Contract Number. Also, on awards of $1 million or more, the SYSCOM 02 or his designated representative shall state briefly on the reverse of NAVMAT Form 4330/27(2-70) the reason for determining that a letter contract was the proper contractual instrument for the procurement.

(b) NAVMAT Forms 4330/2(Rev. 5-66), 4330/3(9-68), and 4330/27(2-70) are available through the Navy Supply System as "Cog I" items.

(c) Report Control Symbol DD-I&L (Q)1119 applies.

[41 FR 55520, Dec. 21, 1976]

§ 737.21-501 Miscellaneous procurement reports.

(a) *Purpose.* This Part 737 prescribes recurring reports covering contractual actions to fulfill statutory and managerial data requirements, and are not based on the reporting requirements of § 21 of this title.

(b) *Reports required.* The following annual reports will be submitted to the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations. A copy of each annual report shall be provided to the Director of Banking and Contract Financing (NCD-4), Office of the Navy Comptroller.

(1) *Extraordinary contractual actions to facilitate the National Defense (PL 85-804)* will be submitted in duplicate within forty-five (45) days after the close of each calendar year in accordance with specfic instructions and format provided in paragraph (e) of this section.

(2) *Grants for basic scientific research and transfer of title to Government equipment (PL 85-934)* will be submitted in duplicate within sixty (60) days after the close of each calendar year in accordance with specific instructions and format provided in paragraph (e) of this section.

(c) *Responsibilities for submission.* (1) The Chief of Naval Material is responsible for submitting the annual report required in paragraph (b)(1) of this section.

(2) The Chief of Naval Research is responsible for submitting the annual report required in paragraph (b)(2) of this section.

(d) *Feeder reports.* Navy procuring activities shall prepare feeder reports of contractual actions occurring during the calendar year in the format prescribed in paragraph (e) of this section and shall submit them to the Chief of Naval Material (MAT 02) or Chief of Naval Research (ONR 600), as appropriate.

(e) *Instructions for preparation and formats.* (1) See Exhibits A and B for reports under Pub. L. 85-804.

(2) See Exhibits C and D for reports under Pub. L. 85-934.

(f) *Reports symbols.* (1) Report Control Symbol DD-I&L(a) 597 applies to

the report required in paragraph (b)(1) of this section.

(2) Report Control Symbol DD-I&L(A) 598 applies to the report required in paragraph (b)(2) of this section.

(g) *Instructions and forms for preparing reports.*

EXHIBIT A—INSTRUCTIONS FOR PREPARING REPORT ON EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE (PUBLIC LAW 85-804)

1. A summary of all actions approved or denied under PL 85-804 as implemented by Section XVII of the Armed Services Procurement Regulation (ASPR) will be prepared in accordance with Exhibit B. Source data for the summary will be obtained from Final Records of Request for Adjustment supported by Memoranda of Decision (ASPR, Section XVII, Parts 2 and 4) and Memoranda of Approval covering the exercise of residual powers (ASPR, Section XVII, Part 3).

2. *Column a.* Data will be shown separately for actions involving a specific dollar cost (lines 1a through 1f) and those not involving such cost (lines 2a through 2f). The titles for types of actions shown in lines 1a, b, and c are mandatory. Titles shown for other lines are illustrative only and may be modified as desired. An example of a contingent liability is a contract containing an indemnity clause insuring the contractors from loss due to radiation hazards.

3. *Columns b, c, and d.* These columns will be used to report data for actions which are approved in whole or in part.

4. *Columns e and f.* These columns will be used to report data for action which are denied in their entirety.

5. *Approved actions for more than $50,000.* To comply with the statutory reporting requirement, additional information is needed on approved actions of more than $50,000. Each contingent liability or advance payment approved under authority of PL 85-804 will be considered to be in excess of $50,000 for reporting purposes. For actions of more than $50,000, one copy of each Final Record of Request for Adjustment supported by a copy of the Memorandum of Decision, and each Memorandum of Approval will be submitted with the summary report. Each Final Record and Memorandum of Approval will be annotated to indicate the line number of the summary on which the action is reported

EXHIBIT B

Extraordinary Contractual Actions To Facilitate The National Defense (PL 85–804)	Department		Period From To	
Type of Action	Actions Approved		Actions Denied	
	No.	Amount Claimed or Requested	Amount Approved	No.	Amount Claimed or Requested
(a)	(b)	(c)	(d)	(e)	(f)
1. Actions Involving Specific Dollar Cost	XXX	XXXXXXXXX	XXXXXXXXX	XXX	XXXXXXXXXX
a. Amendments Without Consideration					
b. Correction of Mistakes					
c. Formalization of Informal Commitments					
d. (Other-Specify by type)					
e.					
f.					
2. Actions Not Involving Specific Dollar Cost	XXX	XXXXXXXXX	XXXXXXXXX	XXX	XXXXXXXXXX
a. Amendments Without Consideration		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXX
b. Contingent Liabilities		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXX
c. Advance Payments		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXX
d. (Other-Specify by Type)		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXX
e.		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXX
f.		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXX
Remarks					

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EXHIBIT C—INSTRUCTIONS FOR PREPARING REPORT ON GRANTS FOR BASIC SCIENTIFIC RESEARCH AND TRANSFER OF TITLE TO GOVERNMENT EQUIPMENT (PUBLIC LAW 85-934)

1. Data will be reported in accordance with Exhibit D for each nonprofit education institution and each other non-profit institution to which (1) a grant was given during the report period for the conduct of basic scientific research, or (2) title to government equipment was vested or transferred either by grant or by contract. Definitions, policy, and administrative responsibilities are specified in Department of Defense Directive 3210.2.

2. Institutions will be listed in alphabetical order in column (a) of the format. The number and value of grants will be entered in columns (b) and (c) and will be based on fully approved grant documents. No entry will be made in these columns where only contracts are involved. A total of the number and value of such grants will be shown at the end of the list.

3. If the grant document provides for vesting of title to equipment in the grantee agency, the estimated cost of such equipment will be entered in column (d); otherwise this column will be left blank.

4. If title to equipment is transferred by contract, as provided in ASPR, Section IV, Paragraph 116, the acquisition cost will be entered in column (e). Contractual transfers of equipment with a value of less than $1,000 per item will be totalled and reported as footnote 2.

EXHIBIT D

Department ———

Grants for Basic Scientific Research and Transfer of Title to Government Equipment

(Public Law 85-934)

January-December

Name and Location of Institution	Grants approved		Title to Equipment Transferred by	
	No.	Value in Dollars	Grant [1]	Contract [2]
(a)	(b)	(c)	(d)	(e)
1. ABC Institute, Akron, Ohio	1	$50,000	$1,000	.....
2. LMN College, Jersey City, N.J	.....	.....	.....	$2,500
3. STV University, Los Angeles, Cal	2	38,500	.....	.....
4. XYZ Hospital, Battle Creek, Mich	1	10,000	500	1,500
Total	4	$98,500	$1,500	$4,000

[1] Included in total of Column (c).
[2] Value of Transfers of Equipment with a Value of Less Than $1,000. $———.

[41 FR 55521, Dec. 21, 1976]

Subpart V—Service Contracts

§ 737.22-102 Procurement of nonpersonal services.

(a) *Scope.* This part applies to the procurement of all services where the determination required by the contracting officer, as set forth in § 22-102.4(a) of this title, is required and the procurement action will exceed $10,000.

(b) *Policy.* As provided in § 22-102.1 (b) of this title, contracts for nonpersonal services, when properly issued and administered, represent an approved resource in the accomplishment of Navy programs. There are no firm rules for characterizing particular services as "personal" or "nonpersonal." However, the criteria set forth in § 22-102 of this title, for recognizing that a contract may be written so as to satisfy the requirements of a "nonpersonal" services contract, but may be administered, afterward, in such a way as to make it "personal" services. For instance, this can occur when a greater amount of supervision and control is exercised over the contractor or his employees than originally set forth in the statement of work. This must be avoided, and the potential for such misuse shall be considered when making the nonpersonal services determination.

(c) *Review and approval.* All determinations of nonpersonal services within the scope of paragraph (a) of this section shall be reviewed by counsel and approved at a level higher than the contracting officer prior to the issuance of the solicitation. This review and approval procedure applies to determinations in support of new procurement, the proposed exercise of an option, placement of orders under task type contracts or BOA's, and to proposed modifications which are simply funding actions or of a strictly administrative nature. The review and approval of proposed exercise of options, etc., shall focus on whether the determination of nonpersonal services incident to the execution of the original contract is still current and valid for the new effort. With respect to annually recurring service contracts in support of base operations (i.e., repair,

maintenance, and overhaul of base equipment, movement and storage of household goods, janitorial services, mess attendant services, base transportation services, etc.), follow-on annual review and approval will not be mandatory, provided, (1) there has been an initial review and approval at a level higher than the contracting officer, (2) the contracting officer makes the determination required by § 22-102.4 of this title, and (3) the contractual requirements, terms and conditions are essentially unchanged. All doubtful cases will be referred to counsel in accordance with § 22-102.4 of this title.

(d) *Documentation.* The determination of nonpersonal services by the contracting officer shall at a minimum, contain:

(1) A copy of the proposed work assignment,

(2) The determination required by § 22-102.4(a)(i) of this title, which shall fully address the criteria set forth in § 22-102.2 of this title, and

(3) If it is proposed to procure the requirement on a sole source basis, a complete justification establishing the impracticability of obtaining competition. This justification shall discuss the extent to which in-house capabilities are available and why they cannot be utilized, and shall also consider the potential for follow-on or added effort and whether or not such effort shall also be sole source.

[41 FR 55523, Dec. 21, 1976]

§ 737.22-200 Procurement of expert or consultant services.

§ 737.22-200-1 Scope of part.

Additional Navy procedures governing the procurement of personal services of experts or consultants, or organizations thereof, under authority of 5 U.S.C. 3109 (formerly 5 U.S.C. 55a) are set forth in the Federal Personnel Manual, Chapter 304 and Appendix C thereto (CMMI 304-C).

§ 737.22-203 Policy.

In the case of task type contracts, where personal services are not involved, there is not need to invoke the exceptional authority of 5 U.S.C. 3109 even though the services of experts and consultants are utilized. Accordingly, 5 U.S.C. 3109 should not be used as authority for such task type contracts.

Subpart W—Subcontracting Policies and Procedures

§ 737.23-100 Review of contractors' procurement systems.

§ 737.23-101 Review criteria.

§ 737.23-101-1 Review of contractors' procurement systems.

(a) *Scope.* This NPD supplements ASPR guidance concerning the criteria for performing an initial CPSR (Contractor Procurement System Review); deciding upon the need for subsequent reviews; and determining the composition of the CPSR team. In addition, requirements are established for evaluating the efforts of the NAVPRO (Naval Plant Representative Office) or the SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) in maintaining surveillance of the contractor's procurement system.

(b) *Expanded Criteria for Conducting CPSRs.* Initial CPSRs shall be conducted when required by § 23.101 and, in addition, in those situations where it is expected that the contractor under the cognizance of a NAVPRO or SUPSHIP will have sales to the Government during the next twelve-month period in excess of $5,000,000 on non-competitive (as to price) negotiated contracts (including modifications to competitively awarded contracts) whether these include firm fixed-price contracts, fixed-price contracts with escalation, or other contract types.

(c) *Subsequent Reviews.* Where the annual evaluation of the need to perform a subsequent CPSR (§ 23.101(b)) results in a decision by the NAVPRO or SUPSHIP that none is necessary, a written determination to the effect, including the rationale therefor, shall be made. A copy of the determination and findings shall be furnished to the higher headquarters activity within the command responsible for establishing CPSR schedules.

(d) *CPSR Teams.* Navy CPSR teams shall include, on a full or part-time

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basis as appropriate, personnel with background and skills in purchasing, financing, estimating, engineering, quality assurance, production and material control, and other expertise considered necessary by the team captain. ASPR S1–202.1 provides additional guidance concerning the review team.

(e) *Review of NAVPR 3/SUPSHIP Subcontracting Surveillance Program.* (1) Before completion of a review (whether initial or subsequent) of the contractor's procurement system, the CPSR team shall, except as noted in paragraph (e)(2) of this section, perform a review of the NAVPRO or SUPSHIP subcontracting surveillance program (see § 737.23–108–1). This review shall entail an evaluation of the following aspects of the program:

(i) Adequacy of the written surveillance plan;

(ii) Extent to which the surveillance efforts of the organizational units and the resident auditor are being coordinated;

(iii) Timeliness of follow-up action to determine the corrective measures being taken by the contractor;

(iv) Degree to which supporting contract administration is being effectively utilized;

(v) Adequacy of the procedures being followed to maintain complete visibility of the status of critical subcontractors; and

(vi) Results attributable to the surveillance program, e.g., effective implementation of Government recommendations by the contractor, continued progress in detecting and resolving problems, contractor emphasis on problem prevention and adoption of preventive measures.

(2) When necessitated by time limitations, the review of the surveillance program may be curtailed provided such a review was accomplished by higher headquarters during the preceding six months.

(3) The CPSR team shall provide on-the-spot guidance to the NAVPRO or SUPSHIP if the CPSR indicates a need for an increase or reduced level of surveillance as the case may be (§ 737.23–108–1(c)) or a need for additional attention to specific areas.

(4) A summary of the findings resulting from the review of the surveillance program shall be included in the CPSR report, together with recommendations for improvement and a conclusion as to the overall adequacy of the program. Where the surveillance review was curtailed in accordance with paragraph (e)(2) of this section, the document containing the findings of the earlier review shall be referenced.

§ 737.23–108 Surveillance of the contractor's approved procurement system.

§ 737.23–108–1 Surveillance of subcontracting operations.

(a) *General.* Subcontract costs represent a large percentage of the total cost of defense procurements. Also, a close relationship exists between sound subcontracting practices and the achievement of prime contract objectives. To determine the effectiveness of subcontracting operations, the NAVPRO (Naval Plant Representative) and the SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) shall establish and maintain a suitably selective and flexible program providing for the continuous, comprehensive surveillance of the contractor's procurement system.

(b) *Definition.* As used in this NPD, a contractor's procurement system refers to the collective policies, procedures, methods, practices and operations utilized by the contractor to purchase, rent, lease, or otherwise obtain material or services required for contract performance. It includes such functions as determinations and definition of requirements, solicitation and selection of sources, preparation and award of subcontracts and intra-company transactions, and all phases of the administration of subcontracts and intra-company transactions, including their close-out and settlement.

(c) *Purpose of Surveillance.* (1) The purpose of maintaining surveillance of subcontracting operations is to determine how effectively they are contributing to prime contract cost, schedule and technical performance requirements; to ascertain what improvements are necessary in the contractor's procurement system; and to assure that preventive or corrective action is taken in a timely manner. To

accomplish this purpose, surveillance efforts shall be directed to those contractor procurement practices which significantly affect cost, schedule, or technical performance.

(2) Care shall be exercised to assure that surveillance is not maintained or extended beyond the level necessary to protect the interests of the Government. Specifically, surveillance shall not be conducted to investigate matters of minor significance, to obtain statistical data simply for the purpose of maintaining statistics, or solely for the purpose of determining compliance with applicable regulations. Prompt action shall be taken to modify or reduce surveillance as changing circumstances warrant or as may be commensurate with a results-oriented surveillance program. As in all contract administration matters, it is essential that contract administration personnel be fully observant of the prime contract terms and conditions in order to avoid actions which exceed contractual requirements and to assure that any directions, suggestions or requests addressed to the contractor are consistent with the contract provisions.

(d) *Applicability.* The subcontracting operations of contractors under NAVPRO/SUPSHIP cognizance shall be kept under continuous surveillance regardless of the approval status of the contractor's procurement system.

(e) *Responsibilities for Surveillance.* The surveillance responsibilities of the respective organizational units of the NAVPRO or SUPSHIP shall be clearly defined and their efforts coordinated to obtain best results. Within each contract administration office an individual shall be designated who will be responsible for:

(1) Developing and maintaining a surveillance plan;

(2) Coordinating the surveillance efforts of the organizational units and the contract auditor, taking care to avoid duplication of the functions involved;

(3) Assuring that the contractor takes necessary corrective action; and

(4) Coordinating and controlling the use of supporting contract administration by other contract administration offices when required.

(f) *Surveillance Plan.* Since procurement operations permeate the entire organization of the contractor, surveillance in one sense is an awareness by NAVPRO or SUPSHIP personnel of how engineering, production and quality problems relate to procurement problems. To be fully effective, the surveillance program must be continuous, comprehensive and flexible. Under a flexible approach, the nature and extent of surveillance will vary with the applicable circumstances. For example, a greater degree of surveillance shall be maintained for development and initial production effort than for follow-on production, and cost-type contracts shall be monitored more closely than fixed-price contracts. The following policies and procedures shall apply in formulating the surveillance plan:

(1) A written plan, providing for continuous surveillance of subcontracting operations shall be developed by each NAVPRO and SUPSHIP. The plan shall be based on the guidance concerning subcontracting evaluations provided herein, in addition to that contained in Part 23, ASPR Supplement No. 1 and the DOD Manual for Contractor Procurement System Reviews.

(2) The surveillance plan shall encompass all aspects of the contractor's procurement system and all operations which impact the contractor's procurement, including but not limited to determination and definition of requirements, purchasing, estimating, financing, progress payments, reimbursement of costs, engineering, qualification approval, priorities and allocations, schedules and delivery dates, expediting, transportation, quality assurance, reliability, maintainability, test requirements, production, material control, Government property, provisioning, repair parts, plans, technical manuals, industrial security, make-or-buy decisions, small business, labor surplus and minority business enterprise programs. Particular emphasis should be given to flowdown of prime contract provisions and, where applicable, the requirements of P.L. 87-653, "Truth-in-Negotiations" Act.

(3) The surveillance plan shall be tailored to the contractor concerned,

taking into account the extent of competition obtained, the contractor's operating methods, the nature of the work being done, procurement cycle stage, types of contracts involved, degree of technical and financial risk, criticality of delivery, security classification, and performance history. The plan shall provide for frequent, selective observations of day-to-day operations related to requirements determination, cost/price analysis, award and subcontract administration. Further, the plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Early involvement at the pre-contract stage is especially important when the proposed subcontract requires Government consent prior to placement.

(4) The surveillance plan shall provide procedures for informing the contractor of surveillance findings and related recommendations; for following up, as necessary, to effect recommended improvements; and, when warranted by the findings, for rescinding approval of the contractor's procurement system.

(g) *Significant Areas for Surveillance.* Surveillance of subcontracting operations shall be conducted to assure that subcontract:

(1) Drawings, plans and specifications properly reflect contract requirements including those related to performance, quality, maintainability and reliability;

(2) Quantities ordered are realistic and reflect effective material control and usage;

(3) Awards are made on a competitive basis whenever feasible;

(4) Delivery or performance schedules permit the contractor to keep his prime contract work on schedule;

(5) Cost/price analysis and negotiation result in fair and reasonable prices; and

(6) Administration provides the prime contractor reasonable visibility of the subcontractor's cost, schedule and technical performance.

An overall objective in connection with the surveillance of subcontracting operations is to assure that the prime contractor performs a thorough review and evaluation of subcontractor cost and pricing data, technical representations and delivery schedules.

(h) *Attendance at Contractor Meetings.* NAVPRO and SUPSHIP personnel shall be encouraged to attend, on a selective basis, contractor procurement meetings, bid openings, program reviews, material review board sessions, subcontractor briefings, make-or-buy reviews and the like.

(i) *Critical Subcontractors.* Critical subcontractors, that is, those performing significant design work, building complex systems, holding high dollar value awards, or working on long lead-time items, shall be identified for special management attention. This identification shall be accomplished as early as possible and in coordination with the prime contractor. The degree of involvement by the prime contractor in progressing critical subcontracts including technical liaison and assessment of risk shall be of primary concern.

(j) *Selection of Subcontractor.* The contractor's source selection methods particularly with respect to the selection of critical subcontractors must be thoroughly reviewed. The review of critical subcontractor selections should begin as early in the procurement cycle as possible and include the prime contractor's advance procurement plan, request for proposal and formal contractual document. Emphasis shall be placed during the review on conformity with Department of Defense acquisition policies as outlined in DOD Directive 5000.1.

(k) *Subcontractor Performance.* Frequent examination shall be made of the contractor's records concerning subcontractor cost, schedule and technical performance putting stress on those regarding critical subcontracts. When appropriate, the contract administration office having cognizance over the subcontractor may be requested to provide supplementary information as a means of verifying the information obtained from the contractor's records.

Subpart X—Disposition of Personal Property in Possession of Contractors

§ 737.24-200 Methods of disposal.

§ 737.24-205 Screening of contractor inventory.

§ 737.24-205-7 Procurement of packing, crating and handling (PC&H) services.

(a) Where a contract does not require the contractor to provide packing, crating and handling services on excess Government property, or where such PC&H services occasion any cost to the contractor for which he will not otherwise be compensated, the contract administration office shall obtain PC&H services from the contractor in possession by contract modification if the contract provides for such a modification. Otherwise, such PC&H services shall be procured from the contractor in possession or other contractor as follows:

(1) If the estimated price is $10,000 or less, the ACO shall purchase the services in accordance with Part 3, Subpart F, or

(2) If the estimated price of purchasing such services is in excess of $10,000, the ACO shall request the nearest Navy filed purchasing (NAVSUP Publication 467), to effect the procurement. For Marine Corps contracts, the cognizant PCO shall be requested to effect the procurement.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55523, Dec. 21, 1976]

Subpart Y—[Reserved]

Subpart Z—Contract Modifications

§ 737.26-100 Modification.

§ 737.26-101 Pricing of contract modifications.

(a) *Policy.* Contract modifications, as defined in § 1.201-2 and § 26.101, made to fixed price type contracts shall be fully priced and otherwise fully definitive at the time of issuance wherever possible.

(b) *Criteria and Procedures for the Creation of Contractual Obligations that are not Fully Priced.* In those cases where it is not possible to fully price new contractual obligations of the type referred to in paragraph (a) of this section, with the exception of those modifications falling within the criteria set forth in paragraph (c) of this section, no such modification should be issued unless it is sufficiently definitive that the Contractor is willing to and does obligate himself to total performance within a stated period of time for a maximum dollar amount which bear a reasonable relationship to the work to be performed. In addition to the foregoing, all such modifications that are issued shall contain a milestone schedule which culminates in a mutually agreed date upon which complete definitization will occur. Such date shall be at most within 180 days after the issuance of the modification, or upon completion of 40% of the work to be performed, whichever occurs earlier. In the latter case, the modification shall require the Contractor to provide reasonable notice to the Government with respect to the progress of the work in terms of percentage of completion. Only rarely should more time be required for complete definitization. When time in excess of 60 days is allowed for submission of price quotations, the 180 day period shall be adjusted accordingly (see § 4-303.3 of this title). It may be granted only by the head of the activity authorized to issue the modification upon a written finding setting forth the circumstances which necessitate the granting of additional time.

(c) *Limitation of Authority.* Modifications to fixed price type contracts that do not fully comply with paragraph (b) of this section shall not be issued unless specifically approved by the Chief of Naval Material in each instance, subject to the following exceptions:

(1) Contractual instruments for work which it is estimated will cost the Government less than $10,000 (net value);

(2) Modifications to major new ship construction or conversion program contracts, if the delay incident to obtaining the approval of the Chief of Naval Material would be likely to create a significant ship delivery schedule slippage, and if the work to

be performed is expected to cost the Government less than $50,000 (net value); *provided, however,* That any such modification shall be personally approved by the cognizant Supervisor of Shipbuilding, Conversion and Repair. In every case, the requirements of other existing law and regulation pertaining to the obligation of the Government by contract shall be fulfilled.

(d) *Documentation.* Whenever a modification that is not fully priced is to be issued, a memorandum signed by the head of the activity otherwise authorized to issue the modification shall be prepared for the contract file. The memorandum shall set forth the facts which necessitate issuance of such a modification.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55523, Dec. 21, 1976]

§ 737.26-102 Execution of a contract modification releasing excess funds.

(a) *Delegation of Authority.* Subject to the limitations prescribed in paragraph (b) of this section, authority is hereby delegated to Administrative Contracting Officers to execute contract modifications providing for the de-obligation of unexpended dollar balances considered excess to known contract requirements in those applicable Navy contracts assigned for administration.

(b) *Limitations.* This delegation applies only to that portion of:

(1) Navy cost-type contracts where Navy funds are involved;

(2) Navy fixed-price type contracts where Navy funds are obligated or committee pursuant to provisioning procedures, or, where Navy funds for engineering services and related support are involved.

(c) [Reserved]

(d) *Procedures.* (1) The Administrative Contracting Officer shall, subject to the limitations prescribed in paragraph (b) of this section, execute a bilateral contract modification reducing the dollar balance of the contract when it is determined that excess funds are avilable for deobligation. (See § 737.20-702-8.)

(e) *Documentation.* The Administrative Contracting Officer shall document the contract file with data in support of his determination that funds are considered excess.

[40 FR 1402, Jan. 7, 1975, as amended at 41 FR 55523, Dec. 21, 1976]

§ 737.26-103 Administration of contract provisions for adjustment of payment and limitation on payments.

(a) *Submission of Quarterly Statements.* The NAVPRO/SUPSHIP (Naval Plant Representative Office or Supervisor of Shipbuilding, Conversion and Repair) is responsible for maintaining controls for the purpose of assuring that contractors submit the quarterly statements required by the Limitations on Payments paragraphs of Incentive Price Revision clauses (§ 7.108) and Price Redetermination clauses (§ 7.109) to the PCO (Procuring Contracting Officer), with a copy to the designated paying activity/activities. If the contractor fails to submit the statement, the NAVPRO/SUPSHIP shall notify the contracting officer, the designated paying activity/activities and the cognizant DCAA contract auditor of the delay and the reasons therefor. Payments shall be suspended by the paying activity/activities if the statement is not submitted when due.

(b) *Review of Quarterly Statements.* (1) Unless the NAVPRO/SUPSHIP or auditor has cause to doubt or question the accuracy of statements furnished in accordance with the limitation on payments provisions, such statements shall ordinarily be relied upon, and prompt payments under the contract shall be made pending review. Arrangements shall be made by the NAVPRO/SUPSHIP for joint reviews with the auditor of quarterly statements. The frequency and scope of such reviews shall be dependent on the dollar amounts involved and the extent of any indicated divergence between interim billing prices and the actual cost of delivered items. At least one comprehensive review shall be made annually. Among other things, review procedures shall establish that costs attributed to delivered items have been excluded from the costs set forth as the basis for unliquidated progress payments on Contractor's Re-

quest for Progress Payment (DD Form 1195).

(2) In certain cases, the NAVPRO/SUPSHIP may have reason to question the accuracy of statements furnished in accordance with the limitation on payment provisions and the amounts involved may be significant. Unless the contractor provides a satisfactory explanation of correction, together with any indicated refund, the NAVPRO/SUPSHIP should notify the paying activity/activities to withhold payments under the contract in an amount deemed sufficient to cover additional refunds that would have resulted from correct quarterly statements.

(c) *Refunds and Adjustments.* (1) *Ascertainment and Collections.* The amount of any monies due from contractors to the Government shall be ascertained promptly and collected expeditiously. The NAVPRO/SUPSHIP shall establish appropriate controls to expedite prompt collection. Any necessary supplemental agreements to provide for refunds or adjustments shall be prepared expeditiously and executed without delay.

(2) *Voluntary Refunds or Payment Adjustments.* The making of voluntary refunds by the contractor in anticipation of retroactive price reductions shall be encouraged. No proposed voluntary refund shall be refused or delayed, and all such be accepted without prejudice to final pricing.

(3) *Billing or Interim Price Adjustments.* Where it is apparent that the interim contract prices are, and will continue to be, excessive, the NAVPRO/SUPSHIP shall recommend to the PCO that billing prices covering future deliveries be modified, and shall notify the Chief of Naval Material (MAT 022) of the recommendation. However, if reductions in billing prices are proposed by the contractor, they shall be made effective immediately without prejudice to further adjustments. Similarly, mutually agreed billing prices shall be made effective immediately. Billings voluntarily reduced by contractors shall, if otherwise proper, be paid at the reduced amounts without awaiting contract modification.

(4) *Refunds or Payment Adjustments—Final Pricing Proposal.* Where the contractor's price proposal under price redetermination or incentive contracts indicates that a significant refund will be due, the NAVPRO/SUPSHIP shall promptly secure an appropriate voluntary or mutually acceptable refund from the contractor.

(5) *Supporting Documentation for Refunds and Adjustments.* In connection with (i) voluntary refunds, (ii) minimum refunds proposed by contractors in connection with final pricing proposals, and (iii) refunds incident to quarterly statements, contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. The making, acceptance and deposit of refunds will not be delayed pending any necessary accounting adjustments.

§ 737.26-200 Negotiation and execution of supplemental agreements issued pursuant to the changes clause.

§ 737.26-209 Responsibility for negotiation and execution of equitable adjustments.

(a) *Delegation of Authority.* In accordance with § 1.406(c)(ix) and subject to the requirements of § 737.1-403-50 and § 737.1-403-51, Administrative Contracting Officers are authorized, except as provided in paragraph (c) of this section, to negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes Clause.

(b) *Retention of Negotiation and Execution Authority.* When negotiation and execution of the supplemental agreement are retained by the procuring activity, the decision for such retention shall be approved at a level higher than the Procuring Contracting Officer, Retention of negotiation and execution authority shall be specified in the letter accompanying the contract assigned for administration.

(c) *Limitations.* The delegation authorized in paragraph (a) of this section does not apply:

(1) To letter contracts;

(2) When the equitable adjustment affects any contract provision other

than price, except for changes in delivery schedule or contract warranties specifically authorized by the Procuring Contracting Officer;

(3) When, in individual cases, a letter accompanying a contract assigned for administration withholds such delegation.

(d) *Responsibilities.* (1) The Procuring Contracting Officer shall cite funding information for the change order when the change order is not initially priced.

(2) If negotiations introduce factors that indicate the change order should be modified, the Administrative Contracting Officer, in addition to compliance with Part 26, Subparts B and C, shall return the change order with comments and recommendations to the Procuring Contracting Officer for action.

(e) *Applicability.* This NPD does not supersede or restrict any authority to act as contracting officer or authorized representative of a contracting officer which may have been or will be duly delegated to persons in Contract Administration Offices by the Heads of Navy Procuring Activities and their designees.

Subparts AA—DD—[Reserved]

Subpart EE—Contract Financing

§ 737.31-200 Guaranteed loans.

§ 737.31-201 Defense contract financing regulations.

See Appendix E of ASPR.

§ 737.31-202 Guaranteed loans; Navy implementation.

(a) Section 30.5 establishes basic contract financing policy for the Department of Defense to assure uniformity in policies, procedures and forms, and to provide for the application of the management principle of internal check and balance.

(b) The Assistant Secretary of the Navy (FM) who is responsible for the Comptroller function, has been delegated all authority conferred upon the Department of the Navy by Sec. 301 of the Defense Production Act of 1950 and by Sec. 302 of Executive Order 10480. The Assistant Secretary of the Navy (FM) has redelegated this authority to the Director of Contract Financing (NCD-4), Office of Navy Comptroller.

(c) To facilitate close cooperation, the Head of each Procuring Activity shall appoint a representative who will act in liaison with the Office of the Comptroller of the Navy and notify that Office of any default or failure of performance under contracts for which a guaranteed loan has been approved.

(d) Upon written request of the Comptroller of the Navy to the principal Navy contracting officer concerned, these contracting officers shall promptly furnish information and certification with respect to contracts of applicants for guaranteed loans in the form and manner prescribed by the Office of the Comptroller. A copy of each such request shall be sent to the Chief of Naval Material.

(e) To promote close cooperation between the procurement and financing functions, the Headquarters Naval Material Command and the Office of the Comptroller of the Navy shall collaborate in the development and promulgation of policies and proceedings relating to the Guaranteed Loan Program. In cases where the Navy Comptroller's evaluation of the application for guaranteed loans indicates substantial doubts as to the soundness of the proposed loan or credit, to such extent that he would be disposed to decline the application because of the estimated financial risks, the problem will be taken up with the Chief of Naval Material with a view to resolving the question of the essentiality of the procurement relation to the financial factors. In the event of a disagreement, the matter will be referred to the responsible cognizant Assistant Secretaries for resolution.

§ 737.31-300 Advance payments.

§ 737.31-301 Defense contract financing regulations.

See § 30.5.

§ 737.31-302 Cognizance and procedures for advance payments.

(a) Section 30.5 sets forth the regulations governing the exercise of au-

thority with respect to advance payments granted by Pub. L. 85-804 and Executive Order No. 10789 issued thereunder.

(b) All delegations of authority with respect to advance payments under 10 U.S.C-2307 conferred upon the Secretary of the Navy have been delegated to the Assistant Secretary of the Navy (FM), who is responsible for the comptroller function. This authority has been redelegated to the Director of Contract Financing (NCD-4), Office of Navy Comptroller.

(c) Requests by contractors for advance payments shall be submitted to the Comptroller of the Navy via the Chief of Naval Material (MAT 020). The Assistant Secretary of the Navy (FM) or his delegated alternate will make the necessary determinations and findings with respect to advance payments.

§ 737.31-400 Progress payment.

§ 737.31-401 Defense contract financing regulations.

See § 30.5.

§ 737.31-402 Procedures for progress payments.

(a) Progress payments shall be based on costs in accordance with § 30.5 except for those types of contracts excluded by § 30.5.

(b) Requests for unusual progress payment pursuant to § 30.5 shall be forwarded via the Chief of Naval Material (MAT 02).

Subpart FF—Fiscal

§ 737.32-100 General.

§ 737.32-101 Comprehensive procedures.

See NAVCOMPT Manual.

§ 737.32-102 Ascertainment and collection of debts owed by contractors; deferred payments.

See NAVCOMPT Manual, par 043202 and § 30.5.

§ 737.32-200 Obligation of funds.

§ 737.32-201 Establishment of obligations under available funds.

(a) NAVCOMPT manual, Volumes 2, 3, and 6 implement section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200), which established the prerequisites to the recording and reporting of an obligation. Particular attention is invited to the special provisions contained in the NAVCOMPT Manual relating to spare parts, special tools, or other equipment included in a contract in an estimated lump-sum amount.

(b) An obligation will be recorded against applicable appropriations or funds only when supported by documentary evidence properly signed before expiration of the period during which the appropriation or fund is available for obligation. Contracts, agreements, orders requiring acceptance, amendments for new procurement, and similar documents requiring two signatures to be valid obligations, must have both signatures affixed prior to expiration for obligation of the appropriation or fund involved. Signatures to such obligating documents will be dated the day that they are affixed to the document. Such signatures will not be given as "as of" date. The date of the last required signature determines the date of the obligation for recording purposes. If such obligating document requires the signature of the contractor and the contracting officer and is signed by the contracting officer subsequent to signing by the contractor, the signature of the contractor need not be dated, provided the following statement is affixed on each original signature page directly below or adjacent to the signature of the contracting officer: "Signed by Contracting Officer on ————————, subsequent to signing by the contractor."

(c) Conformed copies of all obligating documents shall be furnished for the recording of obligations. These copies need not be signed by either party, nor need they set forth in full the names of the individuals signing, their official titles, or the names of the contractors and the procuring ac-

tivities concerned. In lieu thereof, notations or stamps may be applied, such as "Signed on behalf of Contractor" and "Signed on behalf of Government." However, all such conformed copies shall either set forth fully the dates of the signatures on behalf of both parties or will clearly identify the party last signing and set forth fully the date of that signature.

§ 737.32-202 Obligation of transportation costs in purchase documents.

SOURCE: NAVCOMPT Manual 032100.

(a) The cost of transportation of material to first destination is usually charged to the Navy Management Fund with subsequent reimbursement by the appropriation involved. However, if the purchase contract provides that the cost of transportation either is to be included in the purchase price or is to be paid by the supplier subject to reimbursement by the Navy (i.e., the amount of the obligation established by the purchase contract includes the cost of transportation), the transportation cost will be charged to the same accounting data which is charged for the cost of the material. When the purchase contract includes the cost of transportation the estimated transportation cost must be considered together with the cost of the material or the contracting officer may be guilty of overobligating the amount of funds cited in the requisition, or other purchase authorization, in violation of Section 3679, Revised Statutes (31 U.S.C. 665).

(b) Contracting officers are responsible and will ascertain that actual or estimated transportation costs chargeable to the purchase funds of the Navy will not, in conjunction with the purchase price, result in an overobligation. When the supplier is to be reimbursed for transportation costs, the contracting officer shall include an estimate of such costs in the contract under the appropriation data, as follows:

> For obligation purposes only, the transportation costs chargeable to the funds indicated above are estimated not to exceed $——.

These estimated transportation costs will not be included in the total posted in the "Amount" blank on the face of the purchase document; however, the words "PLUS TRANS" will be inserted within the "Amount" blank to alert interested personnel to this additional obligation.

(c) Accordingly, no purchase document shall provide for reimbusable transportation costs where initial destination is unknown.

§ 737.32-203 Providing adequate procurement lead time before deadline dates for final obligation of funds.

See § 737.1-350-2.

§ 737.32-300 Disbursing and accounting requirements.

§ 737.32-301 Designation of the disbursing office.

See § 737.20-706.

§ 737.32-302 Submission of invoices.

§ 737.32-302-1 Progress payment billings and Billings Under Cost-Type contracts.

Cost-type contracts should provide that billings will be submitted directly to the auditor (DOD Contract Audit Manual, par. 8-201). Contracts providing for progress payments should provide that progress payment billings will be submitted to the administrative contracting officer at the office administering the contract.

§ 737.32-302-2 Disbursing by defense contract administration services regions (DCASR).

Except as provided in § 737.32-302-1, contracts which designate a DCASR as the paying office shall provide for the contractor's invoices to be submitted directly to the DCASR.

§ 737.32-302-2 Disbursing by Navy disbursing offices.

(a) *Acceptance at Contractor's Plant.* Where acceptance is at origin, contracts which designate a Navy regional finance center or other Navy activity as the paying office shall provide for the contractor's invoices accompanied by the paying office copies of the related Material Inspection and Receiv-

ing Reports (DD Forms 250) to be submitted directly to the paying office.

(b) *Acceptance at Destination.* Where acceptance is at destination, contracts which designate a Navy regional finance center or other Navy activity as the paying office shall provide for the contractor's invoice to be submitted to the consignee.

§ 737.32-303 Invoicing instructions for multiple destination.

See § 737.7-104-502.

§ 737.32-304 Accounting with appropriate data.

Every contract shall be inscribed with the accounting code numbers (appearing in the purchase request) under which payments on the contract or order are to be made. Under no circumstances shall any contract or order be made without the full designation therein of the accounting code numbers under which the payments thereon are to be made, since the monetary obligation created thereby must be immediately established within the limitation of available appropriated funds or under some statutory authority to enter into such a contract in advance of an actual appropriation. Accounting code numbers are assigned to purchase documents to facilitate the analysis of financial transactions. Applicable accounting data shall also be shown on any change order or amendment to a contract where such change order or amendment either revises the accounting data for any item, or increases or decreases the total amount of a contract. Such accounting data shall be shown either in the proper spaces in the preprinted format on the purchase document, or as in the following illustrated format, in the order and with the heading abbreviation shown:

Appn and Subhead	17X4911.2310
OC	026
BCN	54002
SN	3
AAA	000151
TC	7R
PAA	000000
CC	560851212345

The numbers shown in the above format *are sample numbers only;* those shown on the purchase request must be used. When an element is not present, this fact should be indicated by a zero filling in the appropriate column or opposite the applicable abbreviations used correspond to the headings listed under "accounting and appropriation data" on DD Form 1155 (as overprinted for Navy Accounting data) and represent the following: Appropriation and subhead, object class, bureau control number, suballotment number, authorization accounting activity, type code, property accounting activity and cost code.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 1402, Jan. 7, 1975, as amended at 45 FR 8600, Feb. 8, 1980]

§ 737.32-400 Payment to contractors.

§ 737.32-402 Releases as condition precedent to final payment.

(a) All fixed-price types of contracts which provide, in addition to payment of a fixed price for the articles and services covered thereby (whether stated as a single amount or as separate amounts), for (1) adjustment of the fixed price for labor or material escalation, (2) separate reimbursement of premiums for and related cost of overtime or shift work, or (3) indemnity by the Government against third-party liabilities of the contractor, and all cost-reimbursement contracts, shall provide that the contractor and any assignee shall, as a condition precedent to the final payment under the contract, execute a release of all claims against the Government, its officers, agents and employees under or arising from the contract (see § 737.7-150). Each of such contracts shall further provide for the withholding until final payment of such amount or amounts as in the opinion of the contracting officer will be adequate to obtain execution of the release to which the Government is entitled (see § 737.7-150) for fixed-price contracts, but in the case of cost-reimbursement type contracts not less than the amounts set forth in § 7.203-4).

(b) In the case of a fixed-price contract within paragraph (a) of this section, the release shall discharge the Government, its officers, agents and employees, of and from all claims

under or arising from the contract (see § 737.16–812–50), except if requested by the contractor and if found by the contracting officer to be appropriate, any one or more of the following:

(1) Claims for reimbursement of payment made after the date of the execution of the release on account of premiums for and related costs of overtime or shift work or both under the contract, if such payments are required by a Federal statute, an executive order or a mandatory directive order of any department or agency of the Government relating to hours of employment or compensation for services.

(2) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the contractor, and on such terms and conditions consistent herewith as the contracting officer may prescribe;

(3) Claims based on the liabilities of the contractor to third parties as to which the contractor is to be indemnified by the Government under express contract provisions; and

(4) Claims for reimbursement of expenses (other than expenses of the contractor by reason of its indemnification of the Government against patent liability) incurred by the contractor under the provisions of the contract relating to patents.

(c) In the case of cost-reimbursement type contracts (see paragraph (f)(ii) of the clauses set forth in § 7.203–4(a) and (b)), the releases shall discharge the Government, its officers, agents and employees of and from all claims under or arising from the contract, except, if requested by the contractor, such claims as set forth in § 16.812(b) and (c). If the contract is within the War Projects Insurance Rating Plan and the National Defense Projects Rating Plan, each such release shall except the rights and obligations of the Government and the contractor under any agreement theretofore or thereafter made for the purpose of providing for the adjustment as between the Government and the insurance carrier of premiums under the Rating Plan as applied to the contract.

(d) Nothing in this NPD precludes the inclusion in contracts other than those within paragraph (a) of this section, of an appropriate provision requiring a release as a condition precedent to final payment by the Government.

§ 737.32–403 Reporting under the Vinson-Trammell Act as condition precedent to final payment.

See § 737.33–201(f) and § 737.33–202–2(iii).

§ 737.32–404 Administration of contract provisions for adjustment of payments and limitation on payments.

See § 737.26–103.

Subpart GG—Renegotiation and Vinson-Trammell Acts

§ 737.33–200 Vinson-Trammell Act (10 U.S.C. 2382 and 7300).

§ 737.33–201 Application, exemptions, and reporting requirements. [1]

(a) (1) The profit limitation provisions of the Vinson-Trammell Act are codified in 10 U.S.C. 2382 and 7300, which are referred to in this § 737.33–201 as "the Act." In general terms, as indicated in § 7.104–11, the Act applies to any contract or subcontract, which exceeds or may exceed $10,000 in amount, for the construction or manufacture of any complete aircraft or naval vessel, or any portion thereof. The Act imposes a profit limitation of 10% with respect to such vessel contracts and 12% with respect to such aircraft contracts and provides further that the method of ascertaining the amount of excess profit (which is to be paid into the Treasury) shall be deter-

[1] *Note:* Contracting and disbursing officers are advised that the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.) as amended and extended, suspends the operation of the Vinson-Trammell profit limitations in any case in which a contract is subject to the Renegotiation Act. However, because the Renegotiation Act is temporary legislation and upon discontinuation thereof the Vinson-Trammell profit limitations would again come into operation, the clause prescribed in § 7.104–11 must nevertheless be included in the contract.

mined by the Secretary of the Treasury, in agreement with the Secretary of the Navy, and made available to the public. The current regulations, implementing those provisions with respect to naval vessels and naval aircraft, are set forth in Treasury Decision 4906 (XVIII Cum. Bull. 1939-2,404). These regulations contain the text of Section 3 of the Act, define the terms used therein, explain the scope of that Section and certain exemptions thereof, furnish detailed rules for computing costs and profits and for determining liability, and prescribe the reports which must be filed.

(2) The Act provides that the profit limitation provisions thereof do not apply to "a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control" if the Secretary of the Navy designates the contract or subcontract for exemption. Authority to grant or deny exemptions of contracts and subcontracts from such profit limitation provisions, pursuant to the above-quoted language, is delegated by the Secretary of the Navy to the Chief, the Vice Chief, and the Deputy Chief of Naval Material (Procurement and Production). This delegation is subject to the following limitations set forth in SECNAV letter (OGC: WW:ads) of 3 June 1946.

(b) Such exemptions shall be granted for specific contracts or procurements only, and not for classes of equipment as such, and shall be granted only for contracts or procurements covering research, experimental or development work, or an initial production order. No exemption shall be granted except upon application by the contractor concerned, made prior to or at the time of entering into the contract, accompanied by a recommendation by the Chief of the cognizant contracting Bureau, or his representative, setting forth the following:

(1) A description of the equipment covered by the proposed contract and a statement that it is scientific equipment of the kind specified in the exemption provisions of the Act, stating which category the particular equipment falls under;

(2) A statement that the proposed contract calls for research, experimental or development work, or for an initial production order; and

(3) A recommendation by the Bureau that the exemption be granted.

(c) Each application for exemption shall be addressed to the Commander of the cognizant Systems Command by the contractor or subcontractor concerned and, if recommended for approval, shall be forwarded by the Commander of such Systems Command, or his representative, to the Deputy Chief of Naval Material (Procurement and Production) accompanied by the recommendation as prescribed above. In the event that an application for such exemption is approved, the clause set forth in § 7.104-11(c) should be inserted in the applicable contract.

(1) The Act applies to any contract for the construction or manufacture of new (i.e., previously non-existent) aircraft or naval vessels, or any portion thereof. The statutory designation of the particular appropriation charged by the contract (for example, "Aircraft and Related Procurement" or "Shipbuilding and Conversion" would generally be indicative of the fact that such a contract was for new construction or manufacture and therefore subject to the provisions of the Act. However, the appropriation test is not conclusive. The charging of a construction appropriation would not mean that the Act applied if the procurement was, in fact, not for the construction or manufacture of new aircraft or naval vessels, or portions thereof; conversely, charging an appropriation other than a construction appropriation could result in the Act being applicable if the procurement was, in fact, for the construction or manufacture of new aircraft or naval vessels, or portions thereof.

(2) General statements of the applicability of the Act, reflected in court decisions, in opinions of the Attorney General and of the Comptroller General, and in rulings of the Treasury Department, are set forth in paragraphs (c)(2) (i) through (iii) of this section, for information purposes only.

(i) *Procurement of Equipment.* The Act applies to contracts and subcontracts for the construction or manufacture of items of equipment custom-

arily furnished as portions of complete naval vessels or aircraft at the time such vessels or aircraft are constructed or manufactured. Hence, a contract or subcontract to manufacture shells, torpedo heads, or ammunition for the specific purpose of outfitting new naval vessels would be within the Act.

(ii) *Procurement of Material.* The Act applies to contracts and subcontracts for the construction or manufacture of material to be used in the construction or manufacture of complete naval vessels or aircraft, or any portion thereof, even though such material requires further fabrication or processing before it can be used in the completed vessels or aircraft, or in any component thereof. Hence, a contract or subcontract for the production of steel plates to become a component part of a complete naval vessel then being constructed would be within the scope of the Act.

(iii) *Procurement of Replacements.* Since the Act applies only to contracts for the construction or manufacture of complete naval vessels or aircraft, or any portion thereof, it has been held that the Act has no application to contracts for the furnishing of (*a*) spare parts or (*b*) replacements needed in making repairs to *existing* vessels.

(3) Where, at the time of entering into a contract for the procurement of items of equipment or material for use in or in connection with naval vessels or aircraft, the contracting officer cannot determine that any ascertainable part or portion thereof is to be used in the construction or manufacture of any new aircraft or naval vessel, or any portion thereof, the clause set forth in § 7.104-11(a) shall not be included in the contract.

(4) The Act requires that, with respect to each contract or subcontract coming within the provisions thereof, the contractor or subcontractor concerned shall make a report to the Secretary of the Navy following completion of such contract or subcontract. Section 3(e) of the Act provides that the original of such report shall be submitted to the Secretary of the Navy within 90 days after completion of each contract or subcontract to which the Act applies. The required reports must be filed by contractors and subcontractors concerned within the stated period with respect to all contracts and subcontracts covered by the Act; accordingly, disbursing officers shall withhold final payment upon such prime contracts until advised that the required report has been filed, and, in addition, the voucher for final payment (to be transmitted to the General Accounting Office by the disbursing officer) should be supported by a showing that the required report has been filed. Concerning those cases under existing contracts which contain a self-executing clause (which makes the purchase subject to the profit limitation provisions of the Act only if the Act is in fact applicable), the required reports must be filed by contractors concerned within the stated period and prior to final payment of the contract price unless the contractor has demonstrated to the satisfaction of the contracting officer (whether or not supported by a ruling of the Treasury Department) that the Act does not apply to the particular contract.

§ 737.33-202 Processing of reports.

(a) Contractors and subcontractors performing contracts to which the Vinson-Trammell Act applies are required to file a report with the Secretary of the department concerned within 90 days after completion of the contract.

(b) The following procedures govern the administration of the above reports within the Navy:

(1) Upon receipt in the Secretary's mail room these reports shall be forwarded to the Procurement Control and Clearance Division (MAT 022), Headquarters Naval Material Command.

(2) The Procurement Control and Clearance Division (MAT 022), shall duplicate the reports, keep the original in its master file, and distribute copies to the cognizant contracting bureau and to other procuring activities which may have contracts with the company concerned.

(3) Section 737.33-201(f) requires disbursing officers to withhold final payment on prime contracts until advised that the required report has been

filed. Accordingly, upon receipt of the duplicate report, the contracting officer having cognizance of the prime contract concerned shall advise the disbursing officer that this condition precedent to final payments has been fulfilled.

PART 742—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

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AUTHORITY: 84 Stat. 1894; 42 U.S.C. 4601.

SOURCE: 36 FR 21883, Nov. 17, 1971, unless otherwise noted.

Subpart A—Policies

§ 742.101 Purpose.

The regulations in this part prescribe policies and procedures for the Department of the Navy in imple-

menting the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—Pub. L. 91-646 (84 Stat. 1894) herein called the Act. The Act provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal programs and establishes uniform and equitable land acquisition policies.

§ 742.102 Displacement notice—Application for relocation assistance.

Written notice of displacement served personally or by certified (or registered) first-class mail will be given to each individual, family, business, or farm. A displaced individual, business or farm operation must make application for relocation assistance payments within 18 months from the date on which the displaced person moves from the real property acquired or to be acquired, or the date on which final payment is made for the property acquired whichever is later. The time for filing may be extended upon a proper showing of good cause. A displaced individual, business, or farm operation making proper application will be paid promptly after a move. If the agency head, or his designee, determines that delaying payment until after the move will create a hardship, he will authorize an advance payment.

[38 FR 8153, Mar. 29, 1973]

§ 742.103 Appeal rights.

Any person aggrieved by a determination as to eligibility for relocation payment, or the amount of a payment, in a Department of the Navy project may have his application reviewed by the Secretary of the Navy or his designee.

§ 742.104 Assurance of replacement dwelling prior to displacement.

No phase of any project will be initiated or continued if that phase will cause the displacement of any person from a dwelling until the agency has determined on the basis of a current survey and analysis of available replacement housing that prior to displacement there will be available for each displaced person a decent, safe, and sanitary replacement dwelling.

§ 742.105 Adjustments.

The agency head, or his designee, may make adjustments in the requirement for a decent, safe, and sanitary dwelling only in cases of unusual circumstances.

§ 742.106 Waiver.

In emergencies or other extraordinary situations where immediate possession of real property is crucial, the agency head, or his designee, may waive the requirements of § 742.105. Each such waiver must be reported through administrative channels to the Director, Office of Management and Budget.

§ 742.107 Review.

There shall be a periodic review of all Federal and federally assisted programs to assure compliance with the Act.

[38 FR 8153, Mar. 29, 1973]

Subpart B—Definitions

§ 742.201 Agency head.

The Secretary of the Navy, or his designee, authorized to act for him in implementing these regulations.

§ 742.202 Business.

(a) Any lawful activity, excepting a farm operation, conducted primarily:

(1) For the purchase, sale, lease, or rental of personal or real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization; or

(4) Solely for the purposes of section 202 (a) of the Act, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(5) Part-time occupations which do not contribute materially to the total yearly income of the displaced person

are not considered to come within the definition of a business.

§ 742.203 Decent, safe, and sanitary dwelling.

A dwelling which is in good repair and in sound and weathertight condition, which meets local housing codes, if any, and also meets the following requirements:

(a) *Housekeeping unit:* A housekeeping unit must include a kitchen with fully usable sink; a stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bath and the kitchen; and adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(b) *Nonhousekeeping unit:* A nonhousekeeping unit is one which meets local code standards for boardinghouses, hotels, or other congregate living.

(c) *Occupancy standards:* The occupancy standards comply with local codes.

(d) *Facilities:* A dwelling unit meeting the above physical and occupancy standards is reasonably convenient to such community facilities and schools, stores, and public transportation.

(e) *Where there is no local housing code or code standards are inadequate, a decent, safe, and sanitary dwelling is one which:* Is in a sound, clean, and weathertight condition, has a kitchen with fully usable sink, a stove or connection for same, a separate complete bathroom, hot and cold running water in kitchen and bath, an adequate and safe wiring system for lighting and other electrical services, and heating as required by climatic conditions.

§ 742.204 Department.

The Department of the Navy.

§ 742.205 Displaced person.

Any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of a written order to vacate real property for a project undertaken by the Department; and solely for the purpose of sections 202 (a) and (b) and 205 of the Act, as a result of the acquisition of or as the result of a written order to vacate other real property for such project, on which such person conducts a business or farm operation. If a person moves as the result of such order, it makes no difference whether or not the real property is acquired.

[38 FR 8153, Mar. 29, 1973]

§ 742.206 Dwelling.

The place of permanent or customary and usual abode of a person. It includes a single-family building; a one-family unit in a multifamily building; a unit of a condominium or cooperative housing project; any other residential unit, including a mobile home which is either considered to be real property under State law or cannot be moved without substantial damage or unreasonable cost.

[38 FR 8153, Mar. 29, 1973]

§ 742.207 Economic rent.

Economic rent is the amount of rent the displaced person would have to pay for a similar dwelling unit located in an area not generally less desirable than the location of the dwelling to be acquired.

§ 742.208 Family.

Two or more individuals living together in the same dwelling as a single family unit and who are related to each other by blood, marriage, adoption, or legal guardianship. Upon appropriate determination by the agency head, others who live together as a family unit may be treated as a family for determining benefits under Title II of the Act.

[38 FR 8153, Mar. 29, 1973]

§ 742.209 Farm operation.

Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

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§ 742.210 Initiation of negotiations.

The date the authorized designee of the Secretary makes the first contact with the owner or his representative and discusses a price for the real property to be acquired.

§ 742.211 Mortgage.

Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

§ 742.212 Owner.

A person who holds fee title, a life estate, a 99-year lease, or an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estate or interest, or who is possessed of such other proprietary interest in the property acquired as, in the judgement of the agency head, warrants consideration as ownership. In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

[38 FR 8153, Mar. 29, 1973]

§ 742.213 Person.

Any individual, partnership, corporation, or association.

§ 742.214 Rental rate.

The amount of rent paid or determined to be appropriate for the acquired dwelling.

§ 742.215 Replacement dwelling.

A dwelling which is comparable to the acquired dwelling and is:

(a) Decent, safe, and sanitary.

(b) Functionally equivalent and substantially the same as the acquired dwelling with respect to number of rooms, areas of living space, age, and state of repair. Adequate in size to meet the needs of the displaced person, but may exceed such needs if replacement dwelling has same number of rooms or equivalent square footage as the dwelling from which displaced.

(c) Open to all persons regardless of race, color, religion, sex, or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968.

(d) In areas not generally less desirable than the dwelling to be acquired in regard to public utilities and public, commercial, and community facilities.

(e) Reasonably accessible to the displaced person's place of employment.

(f) Adequate to accommodate the displaced person.

(g) Available on the market to the displaced person at rents or prices within the financial means of the displaced person. For the purpose of determining financial means of families and individuals in accordance with section 205(c)(3) of the Act, a financial means test (ability to pay) must be made. In order to meet a financial means test, a determination should be made as to the displaced person's ability to afford the replacement dwelling. In making this determination, the average monthly rental or housing costs (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay, in general, should not exceed 25 percent of the monthly gross income or the present ratio of housing payment to the income of the displaced family or individual, including supplemental payments made by public agencies.

[36 FR 21383, Nov. 17, 1971, as amended at 38 FR 8153, Mar. 29, 1973]

§ 742.216 Tenant.

A person who leases, rents, lawfully occupies, or temporarily possesses real or personal property of another by any kind of right.

Subpart C—Moving and Related Expenses

§ 742.301 Recipient eligibility.

A displaced person (including one who conducts a business or farm operation) is eligible to receive payments

for moving and related expenses, as hereinafter set out.

[38 FR 8153, Mar. 29, 1973]

§ 742.302 Extent of eligibility.

(a) Each owner-occupant, tenant-occupant, or family displaced from a dwelling may elect to receive either the payment described in § 742.303(a) or the fixed payment described in § 742.304(a) except that no member of a displaced person's family living in the same dwelling unit is eligible for separate payment for moving expenses.

(b) Any displaced business of farm operation may elect to receive either the payment described in § 742.303 or the payment described in § 742.304.

(c) Any displaced owner-occupant of a dwelling who earns income from such dwelling is eligible for payments for actually moving and related expenses for both dwelling and business described in § 742.303 or may elect to receive the fixed payments for both dwelling and business described in § 742.304, or he may elect to receive payment for the dwelling under one alternate and payment for the business under the other alternate.

(d) A person who lives on his business or farm property and is displaced from both his dwelling and business or farm property may elect to receive either the payment described in § 742.303 or the fixed payment described in § 742.304 for the dwelling and business or farm operation; or he may elect to receive payment for the dwelling under one alternate and payment for the business or farm operation under the other alternate.

(e) A person who is displaced from a business or farm operation which results in such person moving from a nearby dwelling may elect to receive for moving from the dwelling either the payment described in § 742.303(a) or the fixed payment described in § 742.304(a).

[36 FR 21883, Nov. 17, 1971, as amended at 38 FR 8154, Mar. 29, 1973]

§ 742.303 Actual expenses payment.

(a) Actual reasonable expenses specified in § 742.305 in moving himself, his family, business, farm operation, or other personal property;

(b) Actual direct losses specified in § 742.306 of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the displacing agency; and

(c) Actual reasonable expense specified in § 742.307 in searching for a replacement business or farm.

§ 742.304 Fixed payment.

(a) A displaced person who must vacate a dwelling may elect to receive, in lieu of reimbursement for actual expenses described in § 742.303(a), a moving expense allowance not in excess of $300 based on schedules maintained by State highway departments, plus a dislocation payment of $200. A displaced person, who elects to receive a payment based on a schedule, shall be paid under the schedule used in the area where the displacement occurs regardless where he relocates. If there is no highway department schedule in the area involved, the agency head shall cooperate with other displacing agencies in the development of a single moving expense schedule for use of all displacing agencies in the area.

(b) A displaced person who is displaced from his place of business whether he discontinues or re-establishes operations, may elect to receive, in lieu of reimbursement for actual expense, specified in § 742.303, a fixed relocation payment equal to the average annual net earnings of the business as determined in accordance with § 742.308 provided:

(1) The business cannot be relocated without a substantial loss of its existing patronage. Existing patronage in connection with a nonprofit organization includes the persons, community, or clientele served or affected by the activities of the nonprofit organization. The agency head will consider all pertinent circumstances in determining whether the business meets this requirement, including the type of business, the nature of the clientele,

and the relative importance of the present and proposed locations to the displaced business and the availability of a suitable replacement location for the displaced person.

(2) The business is not a part of a commercial enterprise having at least one other establishment that is not being acquired which is engaged in the same or similar business. The business must contribute materially to the income of the displaced owner.

(c) A displaced person who is displaced from his farm operation, whether he discontinues or reestablishes operations, may elect to receive, in lieu of reimbursement for actual expenses, specified in § 742.303, a fixed relocation payment equal to the average annual net earnings of the farm operation as defined in § 742.308. If only part of a farm is acquired, such payment shall be made only if the remainder no longer meets the definition of a farm.

(d) The payment provided in paragraphs (b) and (c) of this section shall be not less than $2,500 nor more than $10,000.

[38 FR 8154, Mar. 29, 1973]

§ 742.305 Actual reasonable expenses in moving.

(a) *Items to be included in determining reasonable expenses.* (1) Transportation of individuals, families, and property from acquired site to the replacement site, not to exceed a distance of 50 miles, except where the Secretary's designee determines that relocation cannot be accomplished within the prescribed area.

(2) Packing and crating of personal property, including unpacking and uncrating.

(3) Advertising for packing, crating, and transportation when determined by the agency head to be reasonably required.

(4) Storage of personal property for a period generally not exceeding 12 months when determined by the agency head to be necessary in connection with the relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, and reestablishment, including such modifications as deemed necessary by the agency head of any reconnection of utilities for machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and installation of such property, the displaced person shall be required to agree in writing that the property is personal and the Government is released from any payment for the property.

(7) Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agents, or employees) in the process of moving, where insurance to cover such loss or damage is not available.

(8) Such other items as the agency head determines to be a reasonable expense.

(b) *Items to be excluded in determining reasonable expenses.* (1) Additional expenses incurred because of living in a new location.

(2) Cost of moving structures, improvements, or other real property in which the displaced person reserved ownership, except as otherwise provided by law.

(3) Improvements to the replacement site, except when required by law.

(4) Interest on loans to cover moving expenses.

(5) Loss of goodwill.

(6) Loss of profits.

(7) Loss of trained employees.

(8) Personal injury.

(9) Cost of preparing the application for moving and related expenses.

(10) Payment for search cost in connection with locating a replacement dwelling.

(11) Such other items as the agency head determines should be excluded.

(c) *Limitations.* (1) If the displaced person moves himself, his family, business, farm operation, or other personal property by other than commercial means, the reimbursement allowance will not exceed the estimated cost of moving commercially based on the prevailing local rates for moving unless the agency head determines a greater amount is justified.

(2) If an item of personal property used in connection with a business or farm operation is not moved, but sold and promptly replaced at the new lo-

cation with a comparable item, reimbursement will not exceed the replacement cost minus the proceeds from the sale, or the estimated cost of moving, whichever is less.

(3) If personal property used in connection with a business or farm operation to be moved is of low value and high bulk, and the cost of removing, moving, reinstallation, and reestablishment would be disproportionate in relation to the value, in the judgement of the agency head, the allowable reimbursement for the expense of moving the personal property will not exceed the difference between the amount that would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market.

(4) If the cost of having or relocating an outdoor advertising display or displays is determined to be equal to or in excess of the in-place value of the display, consideration should be given to acquiring such display or displays as a part of the real property.

[38 FR 8154, Mar. 29, 1973]

§ 742.306 Actual direct losses, business or farm operations.

(a) Any person displaced from his place of business or farm operation who is entitled to relocate his personal property therefrom but elects not to do so, in whole or in part, shall be required to make a bona fide effort to sell such items as he elects not to relocate as a condition precedent to any reimbursement of costs incurred or direct losses suffered as a result of such sale or failure to sell in accordance with paragraphs (b), (c) and (d) of this section.

(b) The displaced person in any event shall be reimbursed for the reasonable costs incurred in such sales effort.

(c) As to all items of personal property which the displaced person shall elect not to relocate, he shall be paid:

(1) The difference between the total fair market value of such property for continued use at its location prior to displacement, and the net proceeds from the sale of all of such property, or (2) the estimated cost of moving such property 50 miles, whichever is less.

(d) In no event shall the cost of removal of any personal property not sold and abandoned in place be considered as an offsetting charge against other payments to the displaced person under this section.

[41 FR 29119, July 15, 1976]

§ 742.307 Actual reasonable expenses in searching, business and farm operation.

A displaced person whose business or farm is acquired may be reimbursed for his actual reasonable expenses of searching for a replacement business or farm location. The maximum amount allowable for searching expenses is $500 for each displaced business or farm unless the agency head determines that a greater amount is justified based on the circumstances involved. Payment for these expenses is further limited to:

(a) Travel costs.

(b) Extra costs for meals and lodgings.

(c) Time: Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(d) Realtor assistance: Broker or realtor fees to locate a replacement business or farm operation only when the circumstances warrant.

§ 742.308 Determination of average annual net income.

The average annual net income will be one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes for the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. Another period may be approved by the agency head if the business or farm operation was not in operation for the full 2-year period or if an unusually long timelag between public announcement of a project and the displacement results in a material reduction in the earnings of the business for such 2-year period, or under other conditions clearly war-

ranting a different period. The business or farm operation will be required to furnish pertinent returns filed with Internal Revenue Service for the applicable period, or other acceptable evidence of earnings if not required to file returns.

Subpart D—Replacement Housing Payments for Homeowners (Over 180 Days)

§ 742.401 Eligibility.

A displaced owner-occupant of an acquired dwelling is eligible for a replacement housing payment under this subpart of not to exceed $15,000 if he:

(a) Actually owned and occupied the acquired dwelling for not less than 180 days immediately prior to initiation of negotiations for the property; and

(b) Purchases and occupies a replacement dwelling not later than the end of the 1-year period beginning on the date on which he receives final payment of the purchase price or condemnation award for the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. Purchase of a replacement dwelling shall mean (1) acquisition of an existing dwelling, (2) acquisition and rehabilitation of a substandard dwelling, (3) relocation, or relocation and rehabilitation of an existing dwelling, (4) construction of a new dwelling, (5) contract to purchase a dwelling to be constructed on a site provided by a builder or developer, or (6) contract for the construction of a dwelling on a site which he owns or acquires for this purpose. If construction or rehabilitation is required in the instances cited herein and completion of the construction or rehabilitation is delayed beyond the end of the 1-year period, the agency head may establish the date of occupancy as the date that the displaced person enters into a contract for the construction, rehabilitation, or purchase provided the agency head determines that the delay was for reasons not within the reasonable control of the displaced person, and the displaced person occupies the replacement dwelling when the construction or rehabilitation is completed. Payment by the agency head will not be made until the displaced person has occupied the replacement dwelling.

(c) If replacement housing meeting the criteria of § 742.215 is not available on the market, the agency head may upon a proper finding of the need therefor, consider available housing exceeding the basic criteria.

[36 FR 21883, Nov. 17, 1971, as amended at 38 FR 8155, Mar. 29, 1973]

§ 742.402 Certification of eligibility.

Whenever a displaced person is eligible for a payment under this subpart except that he has not yet purchased a replacement dwelling, the agency head shall, at the request of the displaced person, provide a written statement to any interested person, financial institution, or lending agency as to:

(a) The eligibility of the displaced person for a payment.

(b) The requirements that must be satisfied before such payment can be made.

(c) The amount of the payment to be made by the agency head, provided the proposed replacement dwelling has been selected, or plans and specifications for the construction or rehabilitation of a proposed replacement dwelling are available, and the displacing agency has inspected and approved the selected dwelling or has reviewed and approved the plans and specifications for construction or rehabilitation.

§ 742.403 Selecting a method for determining purchase price for a replacement dwelling.

The agency head may determine the amount necessary to purchase a replacement dwelling by:

(a) A scheduled method in which the agency head establishes a schedule of reasonable acquisition cost for replacement dwellings that are available on the private market in the various types of dwellings to be acquired. This schedule should be based on current analysis of the market; or by:

(b) The comparative method in which the agency head determines the price of a replacement dwelling by selecting one or more dwellings that are

most representative of the dwelling unit acquired, and are available to the displaced person. A single dwelling shall only be used when additional comparable dwellings are not available. Asking prices are to be adjusted to reflect market sale experience.

§ 742.404 Coordination among displacing agencies.

When more than one agency, department, or otherwise, is causing the displacement in a community or an area, the head of the displacing agency shall seek the cooperation of the other agency or agencies on the method for computing the replacement housing payment and on the use of uniform schedules of sale housing in the community or area.

§ 742.405 Costs eligible for payment by agency head.

Costs eligible for payment by the agency head under this subpart are:

(a) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency head, equals the reasonable cost of a replacement dwelling. If the displaced person, on his own, voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the reasonable cost determined by the agency head for a replacement dwelling, the agency head shall pay not more under this item than the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling. If the displaced person, on his own, voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no payment is allowable under this paragraph (a).

(b) The amount, if any, which will compensate the displaced person for any increased interest cost and points which such person is required to pay for financing the acquisition of the replacement dwelling, provided that the acquired dwelling was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. This amount shall be computed on the basis of and limited to:

(1) The amount of the unpaid debt at the time of acquisition of the real property;

(2) The length of the remaining term of the mortgage at the time of acquisition;

(3) The prevailing interest rate and points currently charged by mortgage lending institutions in the vicinity; and

(4) The present worth of the future payments of increased interest, computed at the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(c) Reasonable expenses, as determined by the agency head, incurred by the displaced person for the following purposes except that no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System, or which is determined to be prepaid expenses:

(1) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation.

(2) Lenders, FHA, or VA appraisal fee.

(3) FHA application fee.

(4) Certification of structural soundness when required by lender, FHA, or VA.

(5) Credit report.

(6) Title policy, certificate of title, or abstract of title.

(7) Escrow agent's fee.

(8) State revenue stamps, or sale or transfer taxes.

§ 742.406 Replacement housing payment in condemnation cases.

In the event the acquired dwelling is acquired by condemnation, and the replacement housing payment cannot be completed until final judgment, the following arrangement may be made. An advance payment may be made if the displaced person makes an agreement providing for payment computed

on the basis of the deposit (appraised value), that payment will be recomputed at the time of final judgement, and that the advance payment shall be applied to the total award. If the amounts paid (advance payment plus the deposit) equal or exceed the award, the agreement will provide for acceptance of such amounts in satisfaction of the judgement, inclusive of interest. If the amounts paid are less than the award the agreement will provide that the amounts paid will be applied to the award and interest on the deficiency will be paid on the difference between the award and the amounts paid.

§ 742.407 General.

(a) Payment under this subpart to a displaced owner-occupant who moves from a one-family unit of a multifamily building owned by such person will be based on the cost of a comparable one-family unit in a multifamily building or a single-family structure, without regard to the number of units in the acquired multifamily building.

(b) Payment under this subpart will not affect the eligibility of the displaced owner-occupant to receive a payment for business earnings attributable to rental units or other legitimate business activities conducted in portions of the building.

[36 FR 21883, Nov. 17, 1971, as amended at 38 FR 8155, Mar. 29, 1973]

Subpart E—Replacement Housing for Tenants and Certain Others

§ 742.501 Eligibility.

(a) This subpart is applicable to a displaced person who:

(1) Is a tenant.

(2) Is an owner-occupant who elects to lease or rent rather than purchase a replacement dwelling, or elects to purchase a replacement dwelling but has occupied the acquired dwelling for less than the 180 days required by § 742.401.

(3) Leases and occupies a site for a mobile home when such site is acquired, but only to the extent specified in § 742.509.

(b) A displaced person is eligible for a replacement housing payment under this subpart if he:

(1) Actually and lawfully occupied the acquired dwelling, or site in the case of a mobile home, for not less than 90 days immediately prior to the initiation of negotiations for acquisition of the property.

(2) Rents or purchases and occupies a replacement dwelling not later than the end of the 1-year period, except as specified in § 742.508(a), beginning on the date on which he:

(i) If a tenant, moves from the acquired dwelling.

(ii) If a mobile-home occupant, moves from the acquired site.

(iii) If an owner-occupant, receives from the agency head final payment of the purchase price or condemnation award for the acquired dwelling, or the date on which he moves from the acquired dwelling, whichever is the later date.

(c) Payment under this subpart to a displaced owner-occupant who moves from a one-family unit of a multifamily building owned by such person will be based on the cost of a comparable one-family unit in a multifamily building or a single-family structure without regard to the number of units in the acquired multifamily building.

(d) Payment under this subpart will not affect the eligibility of the displaced person to receive a payment for business earnings attributable to rental units or other legitimate business activities conducted in portions of the building.

[36 FR 21883, Nov. 17, 1971, as amended at 38 FR 8155, Mar. 29, 1973]

§ 742.502 Maximum payment.

The maximum payment which may be made under this subpart is $4,000, except that when the payment is made in connection with the purchase of a replacement dwelling, any amount in excess of $2,000 for the down payment and expenses specified in § 742.508(c) must be matched by the displaced person.

§ 742.503 Selecting a method for determining rental rate for a replacement dwelling.

The displacing agency may determine the amount necessary to rent a replacement dwelling for a displaced tenant by:

(a) A schedule method in which the displacing agency establishes a rental schedule for renting replacement dwellings of the various types of dwellings needed that are available on the private market, this schedule to be based on current analysis of the market; or by

(b) The comparative method in which the displacing agency establishes an average monthly rental rate for a replacement dwelling by selecting one or more dwellings that are available on the private market, available to the displaced person, and are most representative of the dwelling unit acquired.

§ 742.504 Coordination among displacing agencies.

When more than one agency, departmental or otherwise, is causing the displacement in a community or an area, the head of the displacing agency shall seek the cooperation of the other agency or agencies on the method for computing the replacement housing payment and on the use of uniform schedules of rental housing in the community or area.

§ 742.505 Computing rental payments for displaced tenants renting replacement housing.

(a) The displacing agency shall compute the amount of the payment to the tenant as follows:

(1) Multiply the monthly rental rate of the replacement dwelling by 48.

(2) Determine the average monthly rental rate paid by the displaced tenant for the acquired dwelling in the last 3 months prior to initiation of negotiations, provided such rent was reasonable. If such average rent paid was not reasonable, the agency head may use an economic rent amount for the acquired dwelling. If the displacing agency deems it advisable, more than 3 months may be used as a base for determining the average rental rate.

(3) Multiply the average monthly rental rate for the acquired dwelling, as determined in paragraph (a)(2) of this section, by 48.

(4) Subtract from the amount for the replacement dwelling, as determined in paragraph (a)(1) of this section, the amount for the acquired dwelling as determined in paragraph (a)(3) of this section.

§ 742.506 Computing rental payments for displaced owner-occupants renting replacement housing.

The agency head shall compute the amount of the payment to the displaced owner-occupant in the same manner as prescribed in § 742.505, except that economic rent shall be used in making the determination required by § 742.505(a)(2).

[38 FR 8155, Mar. 29, 1973]

§ 742.507 Making payment to a displaced person who rents replacement housing.

(a) If the total rental payment to be made to the displaced person is in excess of $500, payment will be made in four equal annual installments at the beginning of each annual period, provided the agency head determines that the tenant is continuing to occupy decent, safe, and sanitary housing at the beginning of each annual period. This method of payment may be modified as the circumstances of the displaced person warrants, provided the displaced person continues to occupy decent, safe, and sanitary housing.

(b) If the total rental payment to be made to the displaced person is $500 or less, the payment shall be made in one lump sum at the beginning of occupancy of the replacement dwelling. The agency head need not thereafter determine whether occupancy of decent, safe and sanitary housing is continued.

[36 FR 21883, Nov. 17, 1971, as amended at 38 FR 8155, Mar. 29, 1973]

§ 742.508 Purchase of a replacement dwelling.

(a) If a displaced person eligible under this subpart elects to purchase rather than rent a replacement dwell-

ing, purchase of a replacement dwelling shall mean: (1) Acquisition of an existing dwelling, (2) acquisition and rehabilitation of a substandard dwelling, (3) relocation, or relocation and rehabilitation, of an existing dwelling, (4) construction of a new dwelling, (5) contract to purchase a dwelling to be constructed on a site provided by a builder or developer, or (6) contract for the construction of a dwelling on a site which he owns or acquires for this purpose. If construction or rehabilitation is required in the instances cited herein and completion of the construction or rehabilitation is delayed beyond the end of the 1-year period, the agency head may establish the date of occupancy as the date that the displaced person enters into a contract for the construction, rehabilitation, or purchase provided the agency head determines that the delay was for reasons not within the reasonable control of the displaced person, and the displaced person occupied the replacement dwelling when the construction or rehabilitation is completed. Payment by the agency head will not be made until the displaced person has occupied the replacement dwelling.

(b) Whenever a displaced person is eligible for a payment under this section except that he has not yet purchased a replacement dwelling, the agency head shall, at the request of the displaced person, provide a written statement to any interested person, financial institution, or lending agency as to:

(1) The eligibility of the displaced person for a payment.

(2) The requirements that must be satisfied before such payment can be made.

(3) The amount of the payment to be made by the agency head, provided the proposed replacement dwelling has been selected, or plans and specifications for the construction or rehabilitation of a proposed replacement dwelling are available; and the agency head has inspected and approved the selected dwelling or has reviewed and approved the plans and specifications for construction or rehabilitation.

(c) The amount of the payment shall be computed by determining the amount necessary to enable the displaced person to make a down payment and to cover expenses on the purchase of the replacement housing.

(1) The amount necessary for the down payment shall be based on the amount required for a conventional loan.

(2) Reasonable expenses, as determined by the agency head, incurred by the displaced person for the following purposes except that no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System, or which is determined to be prepaid expenses:

(i) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation.

(ii) Lenders, FHA, or VA appraisal fee.

(iii) FHA application fee.

(iv) Certification of structural soundness when required by lender, FHA, or VA.

(v) Credit report.

(vi) Title policy, certificate of title, or abstract of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps, or sale or transfer taxes.

(d) The full amount of the payment must be applied as follows:

(1) The amount allowed for the down payment must be applied to the purchase price.

(2) The amount allowed for incidental costs must be applied to the incidental costs.

(3) The down payment and incidental costs must be shown separately on the closing statement.

§ 742.509 Mobile home site.

If real property is acquired on which a displaced person leases and occupies a site for a mobile home, the following reasonable costs as determined by the displacing agency are allowable and payable in a lump sum:

(a) Moving the mobile home to a replacement site located not more than 50 miles from the acquired site.

(b) Detaching and reattaching fixtures and appurtenances, where applicable.

Subpart F—Relocation Assistance Advisory Services

§ 742.601 Policy.

Whenever the acquisition of real property for a Federal or Federal financially assisted program or project will result in the displacement of any person, the agency head shall provide a relocation assistance advisory program for displaced persons. If it is determined that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the agency head shall offer such person relocation advisory services.

§ 742.602 Cooperation with other Federal and State agencies.

(a) When more than one agency, departmental or otherwise, is administering a relocation assistance advisory program which may be of assistance in the community or area to persons displaced under other programs, the agency head shall offer to cooperate to the maximum extent feasible with the other Federal or State agency causing displacements to assure that all displaced persons receive the maximum assistance available to them.

(b) The agency head shall consult with the appropriate Housing and Urban Development Regional/Area Office concerning the availability of housing and inform such office as to projects which will cause displacement. The agency head shall also consult with appropriate local officials concerning any proposed project in a community, consistent with the procedural requirements of Office of Management and Budget Circular A-95 (Revised).

(c) The agency head may, by contract or otherwise, secure relocation assistance advisory services from the central relocation agency, if available, in the area, or any other appropriate Federal, State, or local governmental agency or from any person or organization.

[38 FR 8155, Mar. 29, 1973]

§ 742.603 Advisory services.

Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Determine the need, if any, of displaced persons for relocation assistance.

(b) Provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sale and rental housing and of comparable commercial properties and locations for displaced businesses and farm operations.

(c) Assure that, within a reasonable period of time prior to displacement, replacement dwellings will be available.

(d) Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location.

(e) Supply information concerning housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons.

(f) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(g) Advise displaced persons that they should notify the agency head before they move, and

(h) At time of initiation of negotiations for acquisition inform the parties in interest of the advisory service to which they may be entitled.

Subpart G—Real Property Acquisition

§ 742.701 Acquisition by agreement.

(a) Every reasonable effort will be made to: (1) Acquire real property by agreement with owners based on negotiations, (2) assure consistent treatment of owners, and (3) accomplish negotiations expeditiously. In no event shall negotiations be deferred nor any other action coercive in nature taken in order to compel an agreement.

§ 742.702 Appraisal.

(a) Prior to initiation of negotiations, an appraisal of the fair market value of the real property interest to be acquired will be made by a qualified appraiser.

(b) The owner or his designated representative will be given a reasonable opportunity to accompany the appraiser during his inspection of the property.

(c) Any decrease or increase in the fair market value of the property prior to the date of the appraisal which is caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than due to physical deterioration within the reasonable control of the owner, will be disregarded in appraising the property.

(d) Where appropriate the estimate of the fair market value of the property to be acquired and the estimate of damages or offsetting benefits to the remaining property will be separately stated.

§ 742.703 Establishing just compensation.

(a) Prior to negotiations the agency head shall establish an amount believed to be just compensation which in no event shall be less than the amount of the approved appraisal.

(b) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency head shall offer to acquire the entire property.

§ 742.704 Initiation of negotiations.

(a) When the just compensation has been established, a prompt offer will be made to acquire the real property for the full amount of the just compensation so established.

(b) When the offer is made, the owner of the real property will be provided with a written statement of (1) identification of the real property and the estate or interest therein to be acquired including the buildings, structures and other improvements considered to be a part of the real property, (2) the amount of the estimated just compensation as determined by the acquiring agency and a summary statement of the basis therefor, and (3) if only a portion of the property is to be acquired, a separate statement of the estimated just compensation for the real property interest to be acquired and, where appropriate, damages and benefits to the remaining real property.

(c) The offer of just compensation does not preclude further negotiations with respect to the purchase price.

(d) Tenants occupying the property shall be advised when negotiations for the property are initiated with the owner thereof.

(e) Contracts or options to purchase real property shall not include any payments for relocation costs or any reference to such payments.

§ 742.705 Condemnation.

(a) The time of condemnation will neither be advanced, nor negotiations, condemnation and the deposit of funds in court be deferred, nor any other action coercive in nature taken in order to compel an agreement on price.

(b) If real property is to be acquired by condemnation, proceedings will be instituted promptly. No action will be taken intentionally which will make it necessary for an owner to institute legal proceedings to prove the taking of his real property.

(c) If the final judgment of the court in a condemnation case is that the acquiring agency cannot acquire the real property by condemnation, or if the proceeding in condemnation is abandoned by the acquiring agency, the acquiring agency must pay the owner of the property such sum as will reimburse the owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings. If these costs are not covered by a court order, reimbursement shall nevertheless be made by the agency head.

§ 742.706 Expenses incidental to transfer of title.

As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award in a condemnation

proceeding to acquire real property, the owner will be reimbursed, to the extent the head of the agency determines fair and reasonable, for expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, and similar expenses incident to conveying the real property to the acquiring agency,

(b) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property, and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is earlier, to the extent payable under State law in an acquisition of real property by the United States.

§ 742.707 Improvements owned by tenants.

(a) Whenever any interest in real property is acquired, the agency head will acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property which such acquiring agency requires to be removed from the real property, or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(b) The following will apply in determining the just compensation for any such buildings, structures, or other improvements:

(1) They will be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of the tenant as against the owner of any other interest in the real property to remove them at the expiration of his term, and (2) the fair market value which such structures, buildings, or other improvements contribute to the fair market value of the real property to be acquired, or the fair market value of such buildings, structures, or other improvements for removal from the real property, whichever is greater, will be paid the tenant therefor, provided the tenant shall assign, transfer and release to the acquiring agency all his rights, title and interest in and to such improvements.

(c) Payments under this § 742.707 will not be made unless the owner of the land involved disclaims all interest in such buildings, structures, or other improvements of the tenant. Nor shall such payments be made which result in duplication of any payments otherwise authorized by law.

(d) The tenant may reject payment under this § 742.707 and obtain payment for the buildings, structures, or other improvements in accordance with any other applicable law.

§ 742.708 Lease to former owner or occupant.

If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the acquiring agency on short notice, the amount of rent required will not exceed the fair rental value of the property to a short-term occupier.

§ 742.709 Requirement to move.

(a) The construction or development of a project will be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property will be required to move from a dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation, without at least 90 days' written notice prior to the date on which such move is required. A notice of less than 90 days may be given only in an emergency or other extraordinary situations. When it is proposed to give an advance notice of less than 90 days the prior approval of the agency head will be obtained.

(b) No owner will be required to surrender possession of real property before he has been paid the agreed purchase price or a deposit has been made with the court for the benefit of the owner in an amount not less than the approved appraisal of the real property being acquired.

PART 744—POLICIES AND PROCEDURES FOR THE PROTECTION OF PROPRIETARY RIGHTS IN TECHNICAL INFORMATION PROPOSED FOR RELEASE TO FOREIGN GOVERNMENTS

Sec.
744.1 Purpose.
744.6 Authorization for release without consent of the owner.

AUTHORITY: Sec. 301, 80 Stat. 379, secs. 5031, 6011, 70A Stat. 278, 375 as amended; 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply the Mutual Security Act of 1954 (68 Stat. 832) as amended, 22 U.S.C. 1750 et seq., and Act of Sept. 4, 1961 (Public Law 87-195, 75 Stat. 424), 22 U.S.C. 2151-2406 (2351, 2356).

§ 744.1 Purpose.

This part implements Part 264 of this title and the Technical Property Interchange Agreements between the United States and foreign governments which agreements are designed to facilitate the interchange of patent rights and technical information for defense purposes.

[26 FR 12217, Dec. 21, 1961]

§ 744.6 Authorization for release without consent of the owner.

(a) Military equipment including the information essential for its operation, maintenance and repair and technical information, known or claimed to be proprietary, which is being considered for release in accordance with § 264.4(d)(3), may be released when the Chief of Naval Operations or his designee or a bureau chief or deputy bureau chief determines under the authority of the Act that such action clearly warrants the assumption of financial liability that may be incurred and there is no acceptable substitute equipment or information for which consent to release is obtainable or which is not proprietary.

(b) Where any technical information is released in accordance with this section, such release shall be subject to the conditions of release set forth in § 264.4(f).

(c) Military equipment, including the information essential for its operation, maintenance, and repair, known or claimed to be privately owned and for which consent for release cannot be obtained may be furnished to foreign governments in accord with § 264.4(d)(3) without further legal authorization, provided such release is made pursuant to the grant aid provisions of the Mutual Security Act of 1954, as amended, and provided further, there is no acceptable substitute equipment or information for which consent for release is obtainable or which is not proprietary.

[24 FR 10715, Dec. 25, 1959, as amended at 44 FR 30686, May 29, 1979]

PART 746—LICENSING OF GOVERNMENT INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE NAVY

Sec.
746.1 Purpose.
746.2 Policy
746.3 Delegation of authority.
746.4 Definitions.
746.5 Government inventions available for licensing.
746.6 Nonexclusive license.
746.7 Limited exclusive license.
746.8 Additional licenses.
746.9 Royalties.
746.10 Reports.
746.11 Procedures.
746.12 Litigation
746.13 Transfer of custody of government inventions.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 40 U.S.C. 486(c); and 41 CFR 101-4.1.

SOURCE: 41 FR 55712, Dec. 22, 1976, unless otherwise noted.

§ 746.1 Purpose.

This part implements Department of Defense Directive 5535.3 of November 2, 1973 and 41 CFR Subpart 101-4.1, and sets forth the policy, terms, conditions, and procedures for the licensing of rights in domestic patents and patent applications vested in the United States of America and in the custody of the Department of the Navy.

§ 746.2 Policy.

(a) A major premise of the Presidential Statement fo Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that government

inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable, since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a United States citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this part.

(d) Subject to the following: (1) Any existing or future treaty or agreement between the United States and any foreign government or inter-governmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Navy research and development contracts where such licenses or other rights to such inventions are provided for in the contract and retained by the party contracting with the Department of the Navy, no license shall be granted or implied in a government invention, except as provided for in this part.

(e) No grant of a license under this part shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisiton and use of rights pursuant to this part shall not be immunized from the operation of state or federal law by reason of the source of the grant.

§ 746.3 Delegation of authority.

The Chief of Naval Research is delegated the authority to administer the patent licensing program, with the authority to redelegate such authority.

§ 746.4 Definitions.

(a) "Government invention" means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Navy, and is designated by the Chief of Naval Research as appropriate for the grant of an express non-exclusive or exclusive license.

(b) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

§ 746.5 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 746.6 and 746.7, subject to the applicable procedures of § 746.11. The Chief of Naval Research may remove a prior designation of availability for licensing of any patent(s) or patent application(s), provided that no outstanding licenses to that invention are in effect.

§ 746.6 Nonexclusive license.

(a) *Availability of licenses.* Each government invention normally shall be made available for the granting of nonexclusive revocable licenses, subject to the provisions of any other licenses, including those under § 746.8.

(b) *Terms of grant.* (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensees to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to contine to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Chief of Naval Research may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government shall make no representation or warranty as to the validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.7 Limited exclusive license.

(a) *Availability of licenses.* Each government invention may be made available for the granting of a limited exclusive license, provided that:

(1) The invention has been published as available for licensing pursuant to paragraph (a) of § 746.11 for a period of at least six months;

(2) The Chief of Naval Research has determined that:

(i) The invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing;

(ii) The desired practical application has not been achieved under any nonexclusive license granted on the invention; and

(iii) The desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to paragraph (d) of § 746.11 for at least 60 days; and

(4) After termination of the period set forth in paragraph (a)(3) of § 746.7 the Chief of Naval Research has determined that no applicant for a nonexclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application, as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in § 746.2 and in accordance with the procedures set forth in § 746.11.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the government invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in paragraphs (c)(6) and (c)(7) of § 746.7, the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a nonexclusive license; and such period of exclusivity shall not exceed 5 years unless the Chief of Naval Research determines, on the basis of a written submission supported by a factual showing, that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Chief of Naval Research, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention throughout the world, by or on behalf of the Government of the United States, and by or on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United states. If the Chief of Naval Research finds it to be in the public interest, this license may also be expressly subject to this same royalty-free right by or on behalf of state and municipal governments.

(7) The license shall reserve to the Chief of Naval Research the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances:

(i) The extent that the invention is required for public use by government regulations, or

(ii) As may be necessary to fulfill health or safety needs, or

(iii) For other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Chief of Naval Research. Each sublicense granted by an exclusive licensee shall make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense shall be furnished to the Chief of Naval Research.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government shall make no representation or warranty as to validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.8 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Chief of Naval Research from granting additional nonexclusive or limited exclusive licenses for government inventions when he determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for, or as part of, the consideration for a license under adversely held patents.

§ 746.9 Royalties.

(a) *Nonexclusive license.* Normally, royalties shall not be changed under nonexclusive licenses granted to United States citizens and United States corporations on government in-

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ventions; however, the Chief of Naval Research may require other consideration.

(b) *Limited exclusive license.* A limited exclusive license on a government invention shall contain a royalty provision and/or other consideration flowing to the Government.

§ 746.10 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention, and other information which the Chief of Naval Research may determine is pertinent to its licensing activities and is specified in the license.

§ 746.11 Procedures.

(a) *Publication requirements.* The Chief of Naval Research shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the United States Patent and Trademark Office, and at least one other publication that the Chief of Naval Research deems would best serve the public interest, a list of the government inventions available for licensing under the conditions specified in this part. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing are encouraged, and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) *Contents of a nonexclusive license application.* An application for a nonexclusive license under a government invention should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and shall include:

(1) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known, and any other identification of the invention;

(2) Name and address of the person, company, or organization applying for the license, and whether the applicant is a United States citizen or a United States corporation;

(3) Name and address of the representative of applicant to whom correspondence should be sent;

(4) Nature and type of applicant's business;

(5) Source of information concerning the availability of a license on this invention;

(6) Purpose for which the license is desired and a brief description of applicant's plan to achieve that purpose;

(7) A statement of the fields of use for which applicant intends to practice the invention; and

(8) A statement as to the geographic areas in which the applicant would practice the invention.

(c) *Contents of an exclusive license application.* An application for an exclusive license should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and, in addition to the information indicated in paragraph (b) of § 746.11, an application for an exclusive license shall include:

(1) Applicant's status, if any, in any one or more of the following categories:

(i) Small business firm;

(ii) Minority business enterprise;

(iii) Location in a surplus labor area;

(iv) Location in a low-income area; and

(v) Location in an economically depressed area;

(2) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(3) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that sum to perform such acts if the license is granted;

(4) A statement that contains the applicant's best knowledge of the extent to which the government invention is being practiced by private industry and the Government;

(5) Identification of other exclusive licenses granted to applicant under in-

ventions in the custody of other government agencies; and

(6) Any other facts which the applicant believes are evidence that it is in the public interest for the Chief of Naval Research to grant an exclusive license rather than a nonexclusive license, and that such exclusive license should be granted to the applicant.

(d) *Published notices.* (1) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

(i) Identification of the invention;

(ii) Identification of the selected licensee;

(iii) Duration and scope of the contemplated license; and

(iv) A statement to the effect that the license will be granted unless:

(A) An application for a nonexclusive license, submitted by a responsible applicant pursuant to paragraph (b) of § 746.11, is received by the Chief of Naval Research within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Chief of Naval Research determines in accordance with his prescribed procedures, under which procedures the Chief of Naval Research shall record and make available for public inspection all decisions made pursuant thereto and the basis therefore, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application withing a reasonable period under a nonexclusive license; or

(B) The Chief of Naval Research determines that third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(2) If an exclusive license has been granted pursuant to this part, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(i) Identification of the invention;

(ii) Identification of the licensee; and

(iii) Duration and scope of the license.

(3) If an exclusive license has been modified or revoked pursuant to paragraph (e) § 746.11, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(i) Identification of the invention;

(ii) Identification of the licensee; and

(iii) Effective date of the modification or revocation.

(e) *Modification or revocation.* (1) Any license granted pursuant to this part may be modified or revoked by the Chief of Naval Research if the licensee at any time defaults in making any report required by the license or commits any breach of covenant or agreement therein contained.

(2) A license may also be revoked by the Chief of Naval Reseach if the licensee willfully makes a false statement of material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(3) Before modifying or revoking any license granted pursuant to this part for any cause, the Chief of Naval Research shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in paragraph (e)(1) of § 746.11, or to show cause why the license should not be modified or revoked.

(f) *Appeals.* An applicant for a license, a licensee, or such other third party who has participated under paragraph (d)(1)(iv)(B) of § 746.11 shall have the right to appeal, in accordance with procedures prescribed by the Chief of Naval Research, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

§ 746.12 Litigation.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement shall be retained with respect to all licenses so issued by the Government.

§ 746.13 Transfer of custody of government inventions.

The Chief of Naval Research may enter into an agreement to transfer custody of a government invention to another government agency for purposes of administration, including the granting of licenses pursuant to this part.

SUBCHAPTER E—CLAIMS

PART 750—GENERAL CLAIMS REGULATIONS

Subpart A—General Provisions for Claims

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750.4 Investigation: Responsibility for.
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750.8 The investigative report: Action by the commanding officer or officer in charge.
750.9 The investigative report: Action by reviewing authority.
750.10 Claims: In general.
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750.12 Claims: Presentment of.
750.13 Claims: Contents of.
750.14 Claims: The scope of liability and the measure of damages.
750.15 Claims: Action by receiving officer or command.
750.16 Claims: Action by adjudicating authority.
750.17 Claims: Payment of.
750.18 Claims: Settlement agreement and release.
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750.20 Claims: Amendment, appeal, or reconsideration of.
750.21 Claims: Action required upon notice of suit.
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750.23 Disclosure of information.
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750.25–750.29 [Reserved]

Subpart B—Federal Tort Claims Act

750.30 Scope of Subpart B.
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AUTHORITY: 5 U.S.C 301; 10 U.S.C. 2733, 5031, and 5148; 31 P.S.C. 240-243; 32 CFR 700.206 and 700.1202., unless otherwise noted.

SOURCE: 38 FR 6028, Mar. 6, 1973, unless otherwise noted.

Subpart A—General Provisions for Claims

§ 750.1 Scope of Subpart A.

(a) General: The Judge Advocate General is responsible for administration and supervision, worldwide, of claims arising under the Federal Tort Claims Act (Subpart B of this part), the Military Claims Act (Subpart C of this part), the Nonscope Claims Act (Subpart D of this part), the Personnel Claims Act, the Foreign Claims

Act, the Act of September 7, 1962, the Medical Care Recovery Act (Subpart A of Part 757 of this chapter), and the Federal Claims Collection Act of 1966 (Subpart B of Part 757 of this chapter).

(b) This Subpart A delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this part. Where the general provisions of this Subpart A conflict with the specific provisions of any subsequent subpart of this part, the specific provisions govern.

(1 CFR 18.14, and Part 21, Subpart B)

[39 FR 20681, June 13, 1974, as amended at 45 FR 8600, Feb. 8, 1980]

§ 750.2 Investigation: In general.

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to insure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. Claims against persons in the naval service arising from the performance of official duties shall be investigated and processed as claims against the United States.

§ 750.3 Investigation: Requirements.

(a) *When required.* Investigations are required whenever a claim against the Navy is filed or is likely to be filed, or when a claim in favor of the Navy is possible. The Navy must have the background information and data to process all claims and to defend all suits which are commenced before the running of the statute of limitations. Accordingly, even when recovery may be barred by statute or decisional law, all deaths, serious injuries, and substantial losses to or destruction of property must be investigated promptly while the evidence is available. When a claim may be barred, as by one of the exclusions enumerated in § 750.36 (c), (d), § 750.55(d) or § 750.65(b), the investigative report must document the factual basis for the exclusion.

(b) *Immediate reports.* An immediate letter report shall be made to the Judge Advocate General, with copies to the Chief of the Torts Section, Civil Division, Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority listed in § 750.80 in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims;

(2) Upon filing of a claim which could develop litigation which would involve a new precedent or point of law (see § 750.53(c)(2));

(3) Claims or possible claims which involve or are likely to involve another agency besides the Department of the Navy.

(c) *Investigation without delay.* Incidents falling within any of the categories listed in paragraph (a) of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

(d) *Additional requirements under other regulations.* This part in no way modifies the requirements of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General Report Control Symbol JAG 5890-12 is assigned to this report.

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976]

§ 750.4 Investigation: Responsibility for.

(a) *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of

the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, see section 0207 of the Manual of the Judge Advocate General. If a nonnaval activity is concerned, see § 750.3(b)(3). Such nonnaval activity should be promptly notified of the incident.

(b) *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

(c) *Report of Motor Vehicle Accident, Standard Form No. 91 RCS JAG 5890-13.* The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form No. 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974; 41 FR 26864, June 30, 1976]

§ 750.5 The investigating officer: In general.

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To insure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignment he may have.

§ 750.6 The investigating officer: Duties.

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

(a) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

(b) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the in-

cident may be made available to higher authority for such action as is required by the circumstances of the case.

(c) To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests.

(d) To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

(e) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see § 750.14.

(1) *Loss of earnings.* Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage, or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained.

(2) *Medical information to be supplied by claimant.* Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

(f) To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

(g) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed.

(1) *Medical examination at a military installation.* The investigating officers, if the injured person does not object, should have a physical examination of the injured person conducted at a military installation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of that report, forwarded to the same addressee as the report of investigation.

(2) *Navy expert opinion.* In appropriate cases, a Navy-employed expert may be asked to evaluate the extent of damage. Anyone possessing special knowledge or experience, such as a public-works estimator, may qualify. Any costs involved in obtaining the expert opinion shall be absorbed by the command to which the expert is attached.

(3) *Government experts from other than Navy sources.* On occasion, expert opinion is available from other departments and agencies of the Government. Arrangements for this service, when available may be made local-

ly. Any expense involved will be absorbed by the command conducting the investigation.

(4) *Civilian experts.* Occasionally, such as when accurate real-estate appraisals cannot be obtained from public-works or Federal Housing Administration personnel, civilian experts must be employed in order to protect the Government's interest. Whenever a Navy-funded civilian expert is considered necessary, the cost will be absorbed by the command conducting the investigation. Medical experts may be employed only with the permission of the Chief, Bureau of Medicine and Surgery, and a request for such permission will normally be made only after a physical examination has been conducted in accordance with paragraph (1) of this paragraph (g).

(h) To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under $600 as set forth in § 750.7(b).

(i) To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or, if a claim has been filed, to see that the information required by § 750.13 has been submitted by the claimant.

(j) To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In a case where not all of the information required by § 750.7 is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

§ 750.7 The investigative report: Contents.

A written report of investigation will be made in each case using standard forms whenever appropriate.

(a) *Pertinent data.* Except in cases falling within the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, service numbers, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses.

(6) Names and addresses of witnesses.

(7) A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in § 750.31(b). The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(8) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(9) Accurate description of all privately owned property involved,

nature and amount of damage, if any, and the names and addresses of the owners thereof.

(10) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, addresses, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(11) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(12) A statement as to whether any person involved, violated any State or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(13) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(14) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractual agreement to indemnify the Government.

(16) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under § 750.6 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by § 750.6 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Subpart B of this part) or the Military Claims Act (Subpart C of this part); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix page 20-c.[1]

§ 750.8 The investigative report: Action by the commanding officer or officer in charge.

(a) *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in § 750.7(b) is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

(b) *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention Staff Judge Advocate." When there is doubt as to the

[1] Filed as part of original document.

appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

§ 750.9 The investigative report: Action by reviewing authority.

(a) *Return or endorsement.* A reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(b) *When a claim has been filed.* If a claim has been filed, see § 750.16. When a claim is received, all holders of the investigative report shall be notified.

§ 750.10 Claims: In general.

(a) *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 750.11–750.22 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

(b) *Claims in favor of the United States.* See Part 757 of this chapter for the processing of claims in favor of the Government.

(c) *Assistance to claimants.* Claimants or potential claimants who make inquiry concerning their rights or procedures to be followed in the filing of claims shall be referred to a Navy claims officer. It shall be an official duty of the claims officer to:

(1) Provide such persons with the proper claim forms, (2) advise where the claims forms should be submitted, (3) advise what, if any, substantiating evidence will be required to be filed with the claims forms, and (4) advise generally concerning the requirements of § 750.13. A federal official must be careful not to violate 18 U.S.C. 205, which makes it a crime for any officer or employee of the United States to act as an agent or attorney in the prosecution of any claim against the United States. See § 727.7(d) concerning requests for legal assistance in connection with claims against the United States.

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976]

§ 750.11 Claims: A proper claimant.

(a) *Damage to property cases.* A claim for damage to or loss, or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

(b) *Personal injury or death cases.* A claim on account of personal injury shall be presented by the person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

(c) *Subrogation.* A subrogor and a subrogee may file a claim jointly or may file separate claims. Except as provided in § 750.40, when separate claims are filed and each claim, individually, is within local authority, they may be processed locally, when appropriate, even if the aggregate of such claims exceeds the monetary jurisdiction of the approving or settlement authority. When one claim cannot be settled, the provisions of

§ 750.16(c-d) apply. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part of shares thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all power for attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.12 Claims: Presentment of.

(a) *Standard Form No. 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form No. 95 (see appendix page 20-a),[1] shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signatures of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually. A subrogor and a subrogee may file a claim jointly or separately. Only one claim, combining damage to property and personal injury or death, may be submitted by a claimant.

[1]Filed as part of original document.

(b) *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, Washington, D.C. 20370. See § 750.40.

§ 750.13 Claims: Contents of.

(a) *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

(b) *Amount of the claim.* The amount of the claim shall be stated in a sum certain and shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement

or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit: A written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. In support of claims for lost earnings, the additional information delineated in § 750.6(d)(1) shall be submitted. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred.

(c) *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

§ 750.14 Claims: The scope of liability and the measure of damages.

No claim can be paid unless a determination is made that the facts alleged and the conduct complained of by the claimant are facts and conduct for which the Government has agreed to stand responsible in money damages under a particular claims statute. Accordingly, the specific provisions of the subsequent parts of this chapter regarding "Scope of Liability" should be considered (see §§ 750.36, 750.55, and 750.65). Similarly, the specific provisions of this chapter concerning "Measure of Damages" should be utilized in valuing the quantum of liability (see §§ 750.37, 750.56, and 750.65).

§ 750.15 Claims: Action by receiving officer or command.

(a) *Record date of receipt.* The first command receiving the claim shall stamp or mark the date of receipt upon the letter of claim or claim form.

(b) *Determine military activity involved.* The receiving command should determine the local naval activity most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred. If a nonnaval activity is or may be the activity most directly involved, see § 750.3(b)(3) and of paragraph (d) of this section.

(c) *When the receiving command is the activity most directly involved.* An immediate investigation in accordance with §§ 750.2–750.7 should be commenced. If an investigation has already been completed, an evaluation of such investigation in light of the claim should be conducted with a view to correcting or supplementing the investigation. In addition, the receiving command shall notify all holders of the investigation that a claim has been filed. The original claim and the investigation or any reevaluation thereof should then be forwarded as directed by § 750.8.

(d) *When the receiving command is not the activity most directly involved.* If an activity other than the receiving command is the activity most directly involved, the original claim should be forwarded to that activity.

§ 750.16 Claims: Action by adjudicating authority.

(a) *Review prior action.* The adjudicating authority is ultimately resonsible for determining that an adequate and complete investigation in accordance with §§ 750.2–750.7 has been conducted, that the date of initial receipt of the claim is recorded on the face of the claim, and that all holders of the investigation, if completed, have been notified of the claim.

(b) *Determine sufficiency of claim.* A determination of the sufficiency of a claim under §§ 750.11–750.12 should be made. If the claim is deemed insufficient, it should be returned to the submitting party together with an explanation of the insufficiency. Such action by the adjudicating authority does not constitute denial of the claim.

(c) *Adjudication of claims.* (1) Claims within the adjudicating authority. Except as provided in § 750.35(c) concerning multiple claims, the appropriate adjudicating authority shall approve or disapprove the claims within his adjudicating authority as described in § 750.80. In unusual cases, the entire record, together with the information required by subsection of this section, may be referred to the Judge Advocate General for appropriate action.

(2) *Claims in excess of the adjudicating authority.* All claims, regardless of the amount involved, should be negotiated for settlement within local adjudicating authority if such settlement is appropriate and possible. Permission of higher command is not necessary. Negotiation beyond local adjudicating authority may be attempted, if appropriate, provided claimant is clearly informed that the final decision on his claim will be made by a higher command. Whenever a case is retained for negotiation more than 6 months after the claim has been submitted, an interim status report will be made to the Judge Advocate General (Litigation and Claims).

(d) *Forwarding a claim to the Judge Advocate General.* In the event a claim cannot be approved, settled, compromised, or denied within the adjudicating authority granted by this chapter, such claim should be forwarded promptly to the Judge Advocate General with the following materials:

(1) An official endorsement or letter of transmittal;

(2) A memorandum of law containing an analysis of the facts, a review of the applicable law, an evaluation of liability, and a recommendation as to the settlement value of the claim;

(3) The original of the investigative report together with all enclosures and allied papers; and

(4) The original claim and all copies thereof filed by the claimant. The adjudicating authority shall retain at least one copy of all materials transmitted to the Judge Advocate General under this paragraph.

(e) *Litigation reports.* Most litigation reports originate from the Litigation and Claims Division of the Office of the Judge Advocate General. The Judge Advocate General may request that the cognizant district judge advocate or staff judge advocate provide a litigation report directly to the United States Attorney representing the Government's interest. A litigation report consists of a letter addressed to the Department of Justice, copy to the U.S. Attorney, containing a narrative summary of the pertinent facts concerning the claim upon which the lawsuit has been filed in the United States district court. It will normally contain an evaluation of the facts together with a comment on the law of the State where the claim arose and recommendations respecting settlement or defense of the case. The report should tell whether an administrative claim (Standard Form 95) or other writing sufficient under § 750.12 was submitted and what disposition was made of such claim. If records show that no administrative claim has been filed, prompt notification of this fact shall be given to the Judge Advocate General, the Department of Justice, and the U.S. Attorney. Copies of the enclosures to the JAG Manual investigation should be provided if they are not classified for security reasons. The investigative officer's finding of facts, opinions, recommendations and endorsements thereon shall not be released except as specifically authorized by the Secretary of the Navy or the Judge Advocate General in accord-

ance with § 750.23. If there is a question as to the propriety of releasing a particular document or information, the matter should be referred to the Judge Advocate General (Litigation and Claims) for resolution.

§ 750.17 Claims: Payment of.

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See § 750.40 regarding the payment of Federal tort claims in excess of $2,500 by the General Accounting Office and appendix page 20-d.[1]

§ 750.18 Claims: Settlement agreement and release.

(a) *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form No. 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness to accept such amount in full satisfaction and final settlement of the claim. A sample settlement agreement is contained in appendix page 20-b.[1]

(b) *Release.* Except for an advance payment pursuant to § 750.71 the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. Acceptance constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b) and Subpart B of this part also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.19 Claims: Disposition or denial of.

(a) *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

(b) *Final denial.* A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail and return receipt requested. The notification of denial may include a statement of the reason or reasons for denial. Such notification shall include a statement that if the claimant is dissatisfied with the action taken on his claim he may:

(1) If the claim is cognizable under the Federal Tort Claims Act, within 6 months of the date of such notification, file suit in the appropriate U.S. District Court.

(2) If the claim is cognizable under the Military Claims Act, within 30 days after receipt of such notification, appeal to the Secretary of the Navy stating the grounds relied upon for such appeal. The notice of denial shall inform the claimant that suit or appeal pursuant to one statute will not toll the time limitation set forth above for the other.

§ 750.20 Claims: Amendment, appeal, or reconsideration of.

(a) *Amendment.* At any time prior to denial, or prior to action by the claimant exercising his option to deem a claim denied, a claim submitted pursuant to the Federal Tort Claims Act may be amended. See §§ 750.34(e) and 750.40.

(b) *Appeal or reconsideration.* (1) In connection with the denial of any claim within the scope of the Federal Tort Claims Act (Subpart B of this part), the claimant may, in writing and provided such writing is received by the authority who denied the claim not later than 6 months after the date of denial, appeal or request reconsideration of his claim. See §§ 750.34(i) and

[1] Filed as part of original document.

750.40. Such appeal or request must state the reasons therefor. An appeal or request filed solely to extend the statutory period for filing suit shall be void.

(2) In connection with the denial of any claim within the scope of the Military Claims Act (Subpart C of this part), or not cognizable under any other provision of law (Subpart D of this part), the claimant may, in writing and provided such writing is received by the proper authority under § 750.53(h) or § 750.53(c) not later than 30 days after the date of denial, appeal or request reconsideration of his claim. Such appeal or request shall state the reasons therefor.

(c) *Disposition of appeal or reconsideration.* Upon receipt of a written appeal or request for reconsideration, such appeal or request shall be promptly considered by the appropriate adjudicating authority. Final disposition shall be in writing as prescribed by § 750.19.

§ 750.21 Claims: Action required upon notice of suit.

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 U.S.C. 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commandant of the cognizant naval district, to the attention of the district staff judge advocate who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner. See §§ 750.2 and 720.20(c).

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made upon the commandant of the appropriate naval district for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed.

(c) *Adjudicating authority.* A request for an investigative report shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed. In addition, the commandant shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

(d) *Litigation reports.* See § 750.16(e).

§ 750.22 Claims: Finality.

Subject to the provisions of 28 U.S.C. 1346(b) and § 750.34(i) respecting civil action against the United States and administrative reconsideration of Federal Tort Claims Act denials, and subject to the provisions of § 750.53(h) regarding appeal of Military Claims Act denials, any award or determination by the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy, or by his designees, under the authority of the Military Claims Act is final and conclusive for all purposes.

§ 750.23 Disclosure of information.

No military personnel or civilian employees of the Navy shall release copies of official papers or any other information which can be used as the

basis of a claim against the United States unless such release has been properly authorized by competent authority. This prohibition does not apply to advice concerning the correct administrative procedure for filing claims or to providing prospective claimants with appropriate claim forms. Disclosure of information from an official JAG Manual investigation, excluding all endorsements, findings of fact, opinions, recommendations, appended material from personnel and medical records, and other material privileged under the Freedom of Information Act (5 U.S.C. 552), may be released by the adjudicating authority set forth in § 750.80 provided all claims filed or anticipated are within his adjudicating authority. All other requests for disclosure of information shall be processed in accordance with Subpart C of Part 720 of this chapter.

§ 750.24 Single-service assignment of responsibility for processing of claims.

(a) *Applicable law.* Department of Defense Directive 5518.5 series (NOTAL) has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act (10 U.S.C. 2734);

(2) Military Claims Act (10 U.S.C. 2733 (see Subpart C of this part));

(3) Act of September 7, 1962 (10 U.S.C. 2734a and 2734b), pro rata cost sharing of claims pursuant to international agreement;

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements;

(5) Act of September 25, 1962 (42 U.S.C. 2651-2653) claims for reimbursement for medical care furnished by the United States (see Part 757 of this chapter);

(6) Act of October 9, 1962 (10 U.S.C. 2737), claims not cognizable under any other provisions of law (see Subpart D of the part);

(7) The Federal Claims Collection Act of 1966 (31 U.S.C. 951-953); the Act of June 1921 (31 U.S.C. 71), claims and demands by the Government of the United States; and

(8) Act of September 8, 1961 (10 U.S.C. 2736), advance or emergency payments (*see* Subpart E of this part).

(b) *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under paragraphs (a)(4), (5), or (7) of this section, or against the United States cognizable under paragraphs (a)(1) through (4), (6), or (8) of this section which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, Republic of Zaire, and as the Receiving State Office in the United States under paragraphs (a)(3) and (4) of this section.

(2) Department of the Navy: Australia, Ethiopia, Iceland, Italy, Portugal, and the Republic of Vietnam.

(3) Department of the Air Force: Canada, Denmark, Greece, Greenland, India, Japan, Nepal, Luxembourg, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

(c) *U.S. forces afloat cases under $500.* Notwithstanding the provisions of subsection b above, the Department of the Navy is authorized to settle claims under $500 caused by Navy personnel not acting within scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in paragraph (a)(4) of this section concerning the processing of nonscope of duty claims by receiving and sending state authorities.

(d) *Assignment of responsibility of a unified command.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974; 41 FR 26864, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

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§§ 750.25–750.29 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.30 Scope of Subpart B.

The regulations of this Subpart B apply exclusively to the administrative processing and consideration of claims against the United States arising under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680). The regulations of the Attorney General of the United States concerning administrative claims under the Federal Tort Claims Act (28 CFR Part 14) are presented in § 750.40 and are expressly incorporated into the regulations of the Judge Advocate General. In cases of conflict between provisions of §§ 750.30–750.39 and the provisions of § 750.40, the provisions of § 750.40 prevail for Federal Tort Claims Act claims.

§ 750.31 Definitions.

(a) *Employees of the Government.* The term "Employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. Contractors with the United States are not Federal agencies, and their employees are not "employees of the Government," even if the contractor is operating a Government-owned plant. Status as an "employee of the Government" is a Federal question to be determined by Federal law.

(b) *Scope of employment and line of duty.* "Scope of employment" and "acting in the line of duty" are synonymous for purposes of the Federal Tort Claims Act, and the meaning is determined in accordance with principles of respondent superior under the State law of the jurisdiction in which the act or omission occurred.

§ 750.32 Statutory authority.

(a) *Waiver of sovereign immunity.* Subject to the provisions of 28 U.S.C. 2671-80, Tort Claims Procedure, the U.S. district courts including the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, have exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 1346(b)).

(b) *Setoff, etc., encompassed.* The jurisdiction described in paragraph (a) of this section includes jurisdiction of any setoff, counterclaim, or other claim or demand on the part of the United States (28 U.S.C. 1346(c)).

(c) *Venue.* Any civil action on a tort claim against the United States under 28 U.S.C. 1346(b) may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred (28 U.S.C. 1402(b)).

(d) *Jury trial.* Any action against the United States under 28 U.S.C. 1346(b) shall be tried without a jury (28 U.S.C. 2402).

(e) *Exclusive character of remedies—*(1) *Action against the United States.* The remedies provided by 28 U.S.C. 1346(b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2679(a)).

(2) *Action against the individual employee.* In most cases, the employee of the Government whose conduct gives rise to a civil action against the United

States under 28 U.S.C. 1346(b) is immune from suit brought against him personally. In cases not covered by the Federal Driver's Act (28 U.S.C. 2679(b)), the immunity arises from case law (Barr v. Matteo, 360 U.S. 564 (1959); Bates v. Carlow, 430 F. 2d 1331 (10th Cir. 1970)), and the immunity must be pleaded and proved (Willingham v. Morgan, 424 F. 2d 200 (10th Cir. 1970)). Since it is possible, notwithstanding the statute and cases cited above, that a Government employee may be held personally liable for damages caused by his negligent performance of official duties, and he may be responsible for paying a judgment where the United States is not named as codefendant, the Government employee should be advised to seek appropriate legal advice in each case. See § 720.20(c) and JAG Instruction 582.2 of February 2, 1962. Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings.

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974]

§ 750.33 Administrative claim and consideration as a prerequisite to suit.

(a) No action may be maintained against the United States under 28 U.S.C. 1346(b) unless the claimant has first properly filed an administrative claim and that claim has been finally denied. See §§ 750.34(b) and 750.34(h) for what constitutes a proper filing and a final denial of a claim. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this paragraph do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim (28 U.S.C. 2675(a)).

(b) No action may be instituted for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the filing of the claim, or upon allegation and proof of intervening facts relating to the amount of the claim (28 U.S.C. 2675(b)). See § 750.34(c) regarding the amendment of an administrative claim.

§ 750.34 The administrative claim.

(a) *Proper claimant*—(1) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(2) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(4) *Loss compensated by insurer.* A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(5) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will be presented in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

(b) *Proper claim and presentation.* A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain. See appendix page 20-a[1] for a sample form. A claim presented to the wrong Federal agency shall be transferred

[1]Filed as part of original document.

forthwith to the appropriate agency. For purposes of the 6-months provision of § 750.33(a), a claim shall be deemed to have been filed when it is received by the appropriate Federal agency. See § 750.33(b)(3) for the reporting of claims within the purview of both the Navy and another Federal agency.

(c) *Evidence and information in support of the claim.* The claimant may be required to furnish any evidence which may have a bearing on either the responsibility of the United States for the death, personal injury, or injury to or loss of property, or the damages claimed (28 CFR 14.4). See § 750.40 and § 750.13 for the specific evidence and information that may be required. Failure of the claimant to provide the required information upon request may result in no administrative consideration of the claim.

(d) *Investigation and examination.* The claim shall be investigated in accordance with Subpart A of this part. The Navy may request, or be requested by, any other Federal agency to investigate a claim filed under 28 U.S.C. 2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination. See § 750.40.

(e) *Amendment of the claim.* A proper claim under paragraph (b) of this section may be amended by the claimant at any time prior to a final disposition of the unamended claim by the Navy or prior to the exercise of the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a). An amendment shall be submitted in writing and shall be signed by the claimant or his duly authorized agent or legal representative. A proper amendment to a pending claim gives the Navy 6 months from the date of receipt of such an amendment to make a final disposition of the amended claim, and the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment. Notwithstanding the above, no finally denied claim for which reconsideration has been requested under paragraph (i) of this section may be amended.

(f) *Payment of the claim.* Any award, compromise, or settlement in an amount of $2,500 or less shall be paid in accordance with § 750.17. Payments in excess of $2,500 shall be paid in accordance with § 750.40. The officer signing Standard Form 1145 as an authorized designee must include a statement over his signature citing his JAG Manual authority to sign. See appendix page 20-d.[1]

(g) *Settlement agreement.* A sample settlement agreement including the required statement concerning fee limitations in Federal Tort Claims Act cases is contained in appendix page 20-b.[1] See § 750.18.

(h) *Denial of the claim.* Final denial of an administrative claim shall be accomplished in accordance with §§ 750.19 and 750.40.

(i) *Reconsideration of the claim under the Federal Tort Claims Act.* Prior to the commencement of suit and prior to the expiration of the 6-month period after a final denial of a claim by the Navy, the claimant or his duly authorized agent or legal representative may file a written request with the Navy for reconsideration of the finally denied Federal Tort Claims Act claim. The Navy shall have 6 months from the date of the filing of a proper request for reconsideration in which to make a final disposition of the request, and such final disposition shall be accomplished in accordance with § 750.20c. Claimant's option under § 750.33a and 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request. A final denial of a request for reconsideration is not a final denial of a claim for purposes of the first sentence of this paragraph, but is a final denial for purposes of §§ 750.33, 750.34(h), and 750.38. Nothing in this paragraph shall be construed to permit amendment of a finally denied claim. A request for reconsideration filed solely for the purpose of extending the § 750.38(b) statutory period for filing suit shall be void.

§ 750.35 Administrative consideration: Who is authorized?

(a) *Statutory authorization.* Pursuant to 28 U.S.C. 2672 of the Federal

[1] Filed as part of original document.

Tort Claims Act and in accordance with regulations issued by the Attorney General (see § 750.40), the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See paragraph (c) of this section for limitations on the authority of the Secretary or his designee.

(b) *Specific delegation and designation.* See § 750.80.

(c) *Limitations on authority.* Notwithstanding the provisions of paragraphs (a) and (b) of this section:

(1) Any award, compromise, or settlement by the Navy under 28 U.S.C. 2672 in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee;

(2) An administrative claim presented under 28 U.S.C. 2672 may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(i) A new precedent or a new point of law is involved;

(ii) A question of policy is or may be involved;

(iii) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third-party claim; or

(iv) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed $25,000; and

(3) An administrative claim presented under 28 U.S.C. 2672 may be adjusted, determined, approved or disapproved, compromised, or settled by the Judge Advocate General only after consultation with the Department of Justice when the United States or its employee agent or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(4) In all situations noted in paragraphs (c) (2) and (3) of this section in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor. Such forwarding shall be in accordance with § 750.16(d).

§ 750.36 Scope of liability.

(a) *In general.* Subject to the exceptions listed in paragraphs (c) and (d) of this section in adjudicating claims under § 750.35, the liability of the United States is generally determined in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2672). Where local law and applicable Federal law conflict, the latter prevails.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the liability of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Claims not within the Act.* By virtue of 28 U.S.C. 2680, the provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of any employee of the Government exercising due care in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter; but see § 750.55(c) for processing mail claims under the Military Claims Act;

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of March 9, 1920, as amended (46 U.S.C. 741-752), or the act of March 3, 1925 as amended (46 U.S.C. 781-790) relating to claims or suits in admiralty against the United States. Claims arising under the Death on the High Seas Act (46 U.S.C. 761) are not excepted from the provisions of 28 U.S.C. 1346(b). Because they may involve both admiralty and torts procedure, however, claims under this Act will be referred to the JAG for adjudication in all cases. By virtue of 28 U.S.C. 2680(d), admiralty claims arising from damage caused by a vessel in the naval service are processed in accordance with Part 752 of this chapter. Admiralty claims arising from other sources may be adjudicated under the Military Claims Act or the Foreign Claims Act, with the assistance of the Admiralty Division of the Office of the Judge Advocate General if appropriate.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 U.S.C. App. 1-44);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided,* That with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of Federal Tort Claims Act shall apply to any claim arising on or after March 16, 1974, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this provision, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of federal law.

(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;

(9) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(10) Any claim arising in a foreign country; and

(11) Any claim arising from the activities of the Tennessee Valley Authority, the Panama Canal Company, a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(d) *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty (Feres v. United States, 340 U.S. 135 (1950); compare Brooks v. United States, 337 U.S. 49 (1949));

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 U.S.C. 240-243 and the applicable Personnel Claims Regulations (see Part 751 of this chapter);

(3) Any claim for the personal injury or death of a Government employee to whom the Federal Employees' Compensation Act, as amended and reenacted (5 U.S.C. 7901-7903, 8101-8193), is applicable (see 5 U.S.C. 8116c, specifically);

(4) Any claim for personal injury or death of a civilian employee of a nonappropriated-fund activity covered by the Longshoremen's and Harbor Workers' Compensation Act (see 33 U.S.C. 905 and 5 U.S.C. 8171);

(5) That portion of any claim attributable to the fault or negligence of a contractor of the Government, to the extent to which such contractor may be liable under the provisions of his contract (see United States v. Seck-

inger, 397 U.S. 203 (1969), and § 750.7(a)(15)), and

(6) Any claim against the Navy by another Federal agency. Tort or tort-type claims for damage to the property of one Government department or agency normally are not asserted against another Government department or agency, regardless of whether a department or agency is fully supported from appropriated funds, is partly supported by revenue-producing activities, or is a Government corporation or a nonappropriated-fund activity (see 25 Comp. Gen. 49 (1945); 9 Comp. Gen. 263 (1930); 6 Comp. Gen. 171 (1926); 6 Comp. Dec. 74 (1899); but see 26 Comp. Gen. 235 (1946); 14 Comp. Gen. 256 (1934)). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government (see 22 Comp. Dec. 390 (1916)). The Government does not reimburse itself for the loss of its own property except where specifically provided for by law. A department or agency of the District of Columbia is not considered to be a Government department or agency for the purpose of filing a claim (see 46 Comp. Gen. 586 (1966); 36 Comp. Gen. 457 (1956)).

(1 CFR 18.14, and Part 21 Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

§ 750.37 Measure of damages.

(a) *In general.* Subject to the exceptions set out in paragraphs (b) and (d) of this section for claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred (28 U.S.C. 2674). When there is a conflict between local law and applicable Federal law, the latter governs.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the measure of damages of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought (28 U.S.C. 2674).

(d) *Indemnity or contribution.* Under circumstances where the Government is deemed to be entitled to contribution or indemnity, the third party will be notified of the claim in writing and will be requested to contribute his fair share of a proposed settlement or to properly indemnify the Government. Contribution or indemnity claims will be processed and negotiated by the persons and commands listed in § 750.80 when the recommended contribution of the Navy is within the settlement authority of such persons or commands. If the third party fails to make satisfactory arrangements, a valid claim may be denied in order to force the third party to be joined as a party defendant when the claimant brings suit. See § 750.35(c)(2)(iii) concerning settlement without indemnification or contribution.

(e) *Setoff.* In a case brought by a serviceman not barred by the Feres doctrine (Feres v. United States, 340 U.S. 135, (1950)), an award will be reduced by the value of benefits received, and to be received in the future, by the serviceman (Brooks v. United States, 337 U.S. 49, (1949)).

§ 750.38 Statute of limitations.

(a) Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within two years after the claim accrued or be forever barred (28 U.S.C. 2401(b)). The filing of suit against the United States does not constitute the presentment of a claim under this subsection or under 28 U.S.C. 2401(b) (Gunstream

v. United States, 307 F. Supp. 366 (C.D. Cal. 1969)).

(b) A tort claim is forever barred unless an action is commenced against the United States within 6 months after the date of mailing of notice of final denial of the claim by the agency to which it was presented (28 U.S.C. 2401(b)). See § 750.34(i) regarding a request for reconsideration.

§ 750.39 Attorney fees.

(a) Attorney fees not in excess of 20 percent of any compromise or settlement made pursuant to §§ 750.34-750.35 above may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney fees shall not exceed 25 percent (28 U.S.C. 2678).

(b) The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant. See appendix page 20-b[1] for a sample settlement agreement including a statement regarding attorney fees.

§ 750.40 Regulations of Attorney General governing administrative claims procedure.

The Regulations of the Attorney General for administrative claims under the Federal Tort Claims Act, appear in 28 CFR Part 14.

§§ 750.41-750.49 [Reserved]

Subpart C—Military Claims Act

§ 750.50 Scope of Subpart C.

The regulations of this Subpart C apply exclusively to the administrative processing of claims against the Navy arising under the Military Claims Act (10 U.S.C. 2733).

§ 750.51 Definitions.

As used in this part (§§ 750.50-750.59);

(a) The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

(b) The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, volunteer workers and others serving as employees of the Navy with or without compensation, and members of the Environmental Science Services Administration or of the Public Health Service who are serving with the Navy or Marine Corps.

(c) Military includes "naval."

§ 750.52 Statutory authority.

(a) *General authorization.* Subject to the statutory exceptions set forth in § 750.55(d), the Secretary of the Navy—or the Judge Advocate General, subject to appeal to the Secretary—may settle and pay, in an amount not in excess of $25,000, a claim against the Navy for damage to or loss or destruction of real or personal property, or for personal injury or death, either caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss of destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise (10 U.S.C. 2733(a)).

(b) *Authorization for payment of claims in excess of $25,000.* If the Secretary of the Navy considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and paragraph (a) of this section, he may make a partial payment of $25,000 and refer the excess to the Office of Management

[1] Filed as a part of original document.

and Budget for submission to Congress for its consideration (10 U.S.C. 2733(d)).

(c) *Delegable authorization to pay claims not in excess of $5,000.* In any case where the amount to be paid is not more than $5,000, the Secretary of the Navy may delegate the authority of 10 U.S.C. 2733(a) and paragraph (a) of this section, subject to appeal to the Secretary or his designee for that purpose (10 U.S.C. 2733(g)). See § 750.80 for the Navy and Marine Corps officials with delegated authority to pay claims, and see § 750.53(h) for the appellate designees under this section.

(d) *No right to sue.* The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States. The United States has consented to be sued in tort under 28 U.S.C. 1346(b) only, and, by virtue of 10 U.S.C. 2733(b)(2), Federal tort claims are not payable under the Military Claims Act.

(e) *Territorial limitations.* There is no geographical limitation on the application of the Military Claims Act, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under Chapter XXII of the Manual of the Judge Advocate General.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

§ 750.53 The administrative claim.

(a) *Proper claimant.* In determining if a claimant is the proper party to pursue the claim, the provisions of §§ 750.11 and 750.34(a) apply. Where the claim is for wrongful death, however, only one claim shall be allowed and any payment shall be apportioned according to § 750.56(b).

(b) *Proper claim and presentation.* A claim is proper in form and presentation if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, together with a claim for money damages in a sum certain.

(c) *Evidence and information in support of the claim.* See section 2013 for the evidence and information required to substantiate a claim. 10 U.S.C. 2733(b)(5) requires that a claim be substantiated in accordance with these regulations in order to be paid.

(d) *Amendment of the claim.* A proper claim may be amended by the claimant at any time prior to a final disposition of the claim. An amendment of a claim shall be submitted in writing and shall be signed by the claimant or a duly authorized agent or legal representative.

(e) *Payment of the claim.* Payment of a claim shall be accomplished in accordance with § 750.17.

(f) *Settlement agreement.* See § 750.18 and appendix page 20b.

(g) *Denial of the claim.* See § 750.19.

(h) *Appeal of the claim.* (1) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. Such appeal shall be in writing and shall state the grounds relied upon.

(2) An appeal in any case where the amount in contention exceeds $5,000 may be decided either by the Secretary of the Navy or the Judge Advocate General, except that, where the claim is disapproved originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary.

(3) An appeal in any case where the amount in contention is $5,000 or less may be decided either by the Secretary of the Navy, the Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), or the Deputy Assistant Judge Advocate General (Claims); provided, any such appeal must be decided by an official senior to the official who originally disapproved the claim.

(4) See § 750.20(c) for procedure for disposing of an appeal.

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, July 13, 1974; 41 FR 26864, June 30, 1976]

§ 750.54 Authority to settle.

See § 750.80.

§ 750.55 Scope of liability.

(a) *Caused by a member or employee.* Subject to the exceptions of paragraph (d) of this section, the Navy shall be responsible under 10 U.S.C. 2733 in money damages for damage to or loss or destruction of property, real or personal, or for personal injury or death, which is caused by military personnel or civilian employees of the Navy while acting within the scope of their employment.

(b) *Otherwise incident to noncombat activities.* Subject to the exceptions of paragraph (d) of this section a claim for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, is payable under the Military Claims Act if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: Maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft, and antiaircraft equipment; sonic booms; use of barriage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

(c) *Specific claims payable.* Claims payable by the Navy under paragraphs (a) and (b) of this section shall include, but shall not be limited to:

(1) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Postal Service of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, the maximum award to a claimant under the provisions of this section shall be limited in amount to that to which the claimant would be entitled from the Postal Service in accordance with the registry or insurance fee paid. The amount of the award shall not exceed the cost of the item to the claimant, however, regardless of the fees paid. The claimant may be reimbursed for the postage and registry or insurance fees as elements of the cost.

(2) *Loaned or rented to the Government.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government, under an agreement expressed or implied, are payable under the Military Claims Act, even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as a contract claims.

(3) *Personal property of prisoners of war.* Claims of prisoners of war or interned enemy aliens for damage to or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy.

(4) *Real property under lease or otherwise.* Claims for damage to real property incident to the use and occu-

pancy thereof by the Government, whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

(d) *Claims not payable.* Notwithstanding paragraphs (a), (b), and (c) of this section, the following claims shall not be paid under 10 U.S.C. 2733:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent, or his employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by that law;

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(4) Any claim of military personnel or civilian employees of the United States for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. 240-243) and applicable regulations (Part 751 of this chapter).

(5) Any claim arising in a foreign country or possession thereof which is cognizable under the Foreign Claims Act (10 U.S.C. 2734) and applicable regulations thereto (Chapter XXII of the Manual of the Judge Advocate General);

(6) Any claim cognizable under 10 U.S.C. 7622 relating to admiralty claims and to claims for damages caused by naval vessels (Part 752 of this chapter);

(7) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in paragraphs (c)(2) and (4) of this section;

(8) Any claim for rent of real or personal property, except as provided in paragraphs (c)(2) and (4) of this section;

(9) Any claim involving the infringement of patents;

(10) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Postal Service to authorized military personnel or civilian employees of the Navy (e.g., designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(11) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(12) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Postal Service (e.g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(13) Any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(14) Any claim for personal injury or death of military personnel or civilian employees of the Government if such injury or death occurs incident to their service; and

(15) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the Federal Tort Claims Act and Subpart B of this part.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974; 45 FR 8600, Feb. 8, 1980]

§ 750.56 Measure of damages.

In cases cognizable under the Military Claims Act (10 U.S.C. 2733), the measure of damages shall be as follows:

(a) *Damage to property.* (1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs: *And provided,* That idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

(b) *Personal injury or death.* In claims for personal injury or death, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

(c) *Limitations.* Payment shall not be made for the following elements of damage: Interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items. The cost of repair estimates reasonably required to process the claim, however, may be paid.

(d) *Setoff of a recovery from a joint tort-feasor.* If a claimant has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

§ 750.57 Statute of limitations.

No claim may be settled under the Military Claims Act unless it is presented in writing within 2 years after it accrues. If such accident or incident occurs in time of war of armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, any claim may, on good

cause shown, be presented within 2 years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President (10 U.S.C. 2733(b)(1)).

§§ 750.58–750.59 [Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

§ 750.60 Scope of Subpart D.

The regulations of this Subpart D apply exclusively to the administrative processing and consideration of claims against the Navy arising under 10 U.S.C. 2737. These claims are sometimes referred to as "nonscope" claims and are claims that are not cognizable under any other provision of law.

§ 750.61 Definitions.

(a) *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

(c) *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the Government.

§ 750.62 Statutory authority.

(a) *General authorization.* 10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation.

(b) *No right to sue.* There is no right to sue the United States on a claim arising under 10 U.S.C. 2737.

(c) *Territorial application.* There is no geographical limitation on the application of 10 U.S.C. 2737.

§ 750.63 Proper claim and claimant/processing of the claim.

(a) *General.* The general claims provisions of Subpart A of this part apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be processed under 10 U.S.C. 2737 and this Part 750.

(b) *Claims submitted pursuant to another statute.* Claims submitted under the provisions of the Federal Tort Claims Act or Military Claims Act shall, in appropriate cases, be considered automatically for an award under this part when payment would otherwise be barred because the employee or serviceman was not in the scope of his employment. If a tender of payment under this part is not accepted by the claimant in full satisfaction of his claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute pursuant to which it was submitted.

(c) *Claims submitted pursuant to this statute.* Claims submitted solely pursuant to 10 U.S.C. 2737 shall be promptly considered. If a claim is denied for any reason, the claimant shall be informed in writing of this fact and that he may appeal such decision (see § 750.19(b)) within 30 days of the notice of denial by writing to the Secretary of the Navy (Judge Advocate General). See § 750.20(b)(2).

§ 750.64 Officials with authority to settle.

See § 750.80.

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26865, June 30, 1976]

§ 750.65 Scope of liability and measure of damages.

(a) *Scope of liability.* Subject to the exceptions of paragraph (b) of this section, the responsibility of the United States shall be in money damages, not to exceed $1,000, for damage to or loss or destruction of property or for personal injury or death caused by

military personnel or civilian officials or employees:

(1) Incident to the use of a vehicle of the United States at any place; or

(2) Incident to the use of any other property of the United States on a Government installation; and

(3) Not cognizable under any other provision of law.

(b) *Specific claims not payable.* A claim may not be allowed under 10 U.S.C. 2737:

(1) If the damage to or loss of property, or the personal injury or death, was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(2) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(3) Unless it is presented in writing within 2 years after it accrues;

(4) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(5) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(6) If it is a subrogated claim; or

(7) If it is cognizable under any other provision of law.

(c) *Measure of damages.* Compensation under 10 U.S.C. 2737 for damage to or loss or destruction of property, or for personal injury or death shall be computed in accordance with § 750.56, except that damages for personal injury or death under this part shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States, and except that in no case under this part shall an award for damages be in excess of $1,000.

§ 750.66 Statute of limitations.

A claim against the United States under 10 U.S.C. 2737 shall be presented in writing within 2 years from the date it accrues or be forever barred.

§§ 750.67–750.69 [Reserved]

Subpart E—Advance Payments

§ 750.70 Scope of Subpart E.

The regulations of the Subpart E apply exclusively to the payment of amounts not to exceed $1,000 under 10 U.S.C. 2736 in advance of submission of a claim.

§ 750.71 Statutory authority.

10 U.S.C. 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1,000 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

§ 750.72 Officials with authority to make advance payments.

See § 750.80.

§ 750.73 Conditions for advance payments.

Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(a) The injury, death, damage, or loss would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734);

(b) The payee, insofar as can be determined, would be a proper claimant under the Foreign Claims Regulations or is the spouse or next of kin of a proper claimant who is incapacitated;

(c) The provable damages are estimated to exceed the amount to be paid;

(d) There exists an immediate need of the person who suffered the injury,

damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(e) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(f) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (1) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (2) occurred "incident to noncombat activities" of the Department of Navy as defined in § 750.55(b).

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 45 FR 8600, Feb. 8, 1980]

§§ 750.74–750.79 [Reserved]

Subpart F—Authorization To Adjudicate

§ 750.80 Table of delegation and designated authority to pay claim.

"(a) *Amount.* See Appendix A-20-(e) of the Manual of the Judge Advocate General.

(b) *Territory.* See Appendix A-20-(f) of the Manual of the Judge Advocate General."

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26865, June 30, 1976]

PART 751—PERSONNEL CLAIMS REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 240–243; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6040, Mar. 6, 1973, unless otherwise noted.

§ 751.0 Authority.

Sections 751.1 to 751.29 are issued under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

§ 751.1 Definitions.

In this part:

(a) *Claim.* "Claim" means any claim filed under oath by the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture, or abandonment of their personal property incident to their service.

(b) *Service personnel.* "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

(c) *Civilian employees.* "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

(d) *Navy and naval.* "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

(e) *Damage or loss.* "Damage or loss" includes destruction, capture, or abandonment.

§ 751.2 Scope.

Under this part, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable per incident on a claim is $15,000.

[38 FR 6040, Mar. 6, 1973, as amended at 41 FR 26865, June 30, 1976]

§ 751.3 Claims payable.

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

(a) *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurrence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see paragraphs (a) (1) and (2) of this section), designated by superior authority for the reception of the property.

(b) *Transportation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) When shipped under orders; or

(2) In connection with travel under orders; or

(3) In connection with travel in performance of military duty with or without troops.

(c) *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

(d) *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerrilla, organized brigandage or other belligerent activities, whether or not the United States is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

(e) *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

(f) *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(g) *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

(h) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him.

(i) *Claims for damage to or loss of motor vehicles.* (1) Claims for damage to or loss of motor vehicles are limited to a maximum $1,000.00, not including the contents thereof, and are payable only if:

(i) The motor vehicle was located at quarters or other authorized places as defined in § 751.3(a), or

(ii) The damage to or loss was incurred in the authorized performance of official Government business, or

(iii) The damage to or loss was incurred while the motor vehicle was located on base: *Provided,* The loss or damage was caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism, or

(iv) The damage to or loss was incurred under any of the circumstances contemplated by paragraphs (a), (b), (d), (e), or (f) of this section. See also § 751.4(g).

(2) Claims arising during the shipment of motor vehicles under permanent change of station orders are not subject to a $1,000.00 maximum.

(3) The following definitions pertain as used within this section.

(i) "Motor vehicles" includes automobiles, trucks, campers, recreation vehicles, boats, and motorcycles.

(ii) "On base" means any fixed land area, wheresoever situated, controlled, and used by United States military activities or other Department of Defense activities. Claims for damage to or loss of motor vehicles arising out of an incident occurring on board a base such as United States Naval Station, Rota, Spain (a Spanish Naval Base) or on board a NATO Base such as Allied Forces Southern Europe, Bagnoli, Naples, Italy, are not intended to be excluded by this section because the base is not "controlled" by the United States. Claims arising out of an incident occurring on board a foreign military base not controlled or used by United States military activities are intended to be excluded. In case of doubt, the matter should be referred to the Judge Advocate General (Claims).

(iii) "Other unusual occurrence" does not include collision with another vehicle. See § 751.4(g).

(iv) "Shipment" means transportation via Government vessel, chartered commercial vessel, or by Government bill of lading on commercial vessels, and includes storage, on-loading, and off-loading incident thereto.

(j) *Housetrailers.* (1) The term "house trailer," as used in this chapter, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, house trailers and their contents while on Government property and payable under § 751.3(a)(3). Claims for loss of, or damage to, house trailers and their contents arising incident to shipment are payable under § 751.3(b)(1): *Provided,* That, when transported by other than the service member or an agent or agency of the Government,

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the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the housetrailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the housetrailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the housetrailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a housetrailer for shipment by a carrier is presumptive evidence that the housetrailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a prima facie case by proving that the damage occurred during transportation. Damage which is due to (i) the negligence of the carrier, or (ii) collision which the housetrailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (e.g., a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (e.g., that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a housetrailer claim should include, but is not necessarily limited to, the following:

(i) Copy of the premove inspection report;

(ii) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(iii) Copy of the damage report (generally prepared by the carrier);

(iv) Government inspection (include photographs of each area or item of damage where this may prove helpful);

(v) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(vi) Repair bills or estimates as to the cost of repairs;

(vii) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(viii) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(ix) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(x) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

(k) Theft from the person of the claimant is reimbursable if it is established that the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreational facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities immediately, or as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22420, June 24, 1974; 43 FR 25425, June 13, 1978; 43 FR 33421, July 31, 1978]

§ 751.4 Claims not payable.

Claims may not be allowed for:

(a) *Money or currency.* Money or currency, except as provided for by §§ 751.3(h) and 751.3(k), or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee. The adjudicating authority should use the test of whether the claimant did the best he could under the circumstances to protect his property. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

(b) *Unserviceable property.* Worn-out or unserviceable property.

(c) [Reserved]

(d) *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

(e) [Reserved]

(f) *Articles being worn.* Articles being worn, except under the circumstances described in § 751.3(c), (d), (e), and (k) above.

(g) *Intangible property.* Intangible property, such as bankbooks, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(h) *Property owned by United States.* Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

(i) *Motor vehicles.* Motor vehicle claims for collison damage are not payable under this chapter, but may be paid by a military department under the Military Claims Act (Subpart C of Part 750 of this chapter) caused by a member or employee of that department.

(j) *Enemy property.* Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

(k) *Losses of insurers and subrogees.* Losses of insurers and other subrogees.

(l) *Losses recovered from insurers or carriers.* Losses, or any portion thereof, which have been recovered from an insurer or carrier.

(m) *Losses in unassigned quarters in the United States.* Claims otherwise cognizable under § 751.3(a) are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

(n) *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

(o) *Negligence of claimant.* Claims for lost or damaged personal property caused in whole or in part as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of employment. Negligence may be defined as failure to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

(p) *Business property.* Property normally used for business or profit.

(q) *Fees for obtaining estimates of repair.* Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under these regulations.

Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(r) *Theft.* In all cases where a claim is made for articles lost by theft, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, robbery, burglary, or housebreaking.

(s) *Trailers.* Loss or damage to trailers, including house trailers and integral parts thereof except as provided in § 751.3(j). Household effects contained in trailers may be considered under § 751.3(a)(1) when the trailer is located in an assigned area on a Government installation.

(t) *Violation of law or directives.* Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22420, June 24, 1974; 41 FR 26865, June 30, 1976; 43 FR 25426, June 13, 1978]

§ 751.5 Type and quantity of property.

(a) *Must be reasonable, useful, or proper.* Claims are payable under the provisions of this chapter only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

(b) *Ownership or custody.* Claims which are otherwise within the provisions of this chapter will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (e.g., borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant).

§ 751.6 Computation of award.

(a) *Cost of property as basis.* The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. In lieu of deducting salvage value from the depreciated value of an item, the adjudicating authority may require surrender of the item to the Government upon payment of the full depreciated value. Items surrendered will be disposed of in the same manner as property coming into Government possession under the provisions of § 751.13(b). If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

(b) *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its costs, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

(c) *Expensive articles.* Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the

fair and reasonable purchase price of substitute articles of a similar nature.

(d) *Acquisition.* Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

(e) *Black market.* No reimbursement will be made for articles acquired in black market or other prohibited activities.

(f) *Maximum allowance.* The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than the average quantities of particular items will be considered.

§ 751.7 Statute of limitations.

No claim may be paid under the provisions of this chapter unless presented in writing within 2 years after such claim accrues: *Provided,* That if the claim accrues in time of war, or in time of armed conflict in which the Armed Forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

§ 751.8 Demand on carrier, contractor, and/or insurer.

(a) *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped under Government bill of lading pursuant to authorized travel orders, the owner or claims investigating officer will file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract. When property is not shipped under Government bill of lading, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claim adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

(1) The payment voucher;

(2) The completed personnel claim form;

(3) The estimated or actual cost of repair:

(4) A document indicating the conditions of the item upon delivery to the carrier; and

(5) A document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in appendix section A-21(a).[1]

(c) *Nontemporary storage warehousemen.* Whenever property is damaged, lost, or destroyed while being

[1] Filed as part of original document.

stored under a basic agreement between the Government and the warehouseman, the owner or claims investigating officer will file a written claim for reimbursement with the warehouseman in accordance with the terms of the applicable storage agreement.

(d) *Pack-and-crate contractors.* When loss or damage is the result of improper packing or crating, the claims-investigating officer will prepare and forward to the origin Navy Personal Property Office the fully documented claim against the packing-and-crating contractor including the following information:

(1) The applicable paragraph number of MILSTD 212 and a written explanation of the deficiency;

(2) When available, photographs of the damage and of the external shipping container;

(3) A statement describing the external condition of the shipping container, i.e., any evidence of rough handling;

(4) A statement indicating whether or not there is any evidence of water damage to the external shipping container;

(5) A statement indicating whether cartons, crates, etc. were properly packed in the external shipping container and whether sufficient stuffing was added to prevent shifting of articles or packages inside the box as required by MIL–STD 212.

The origin Navy Personal Property Office will file the claim with the contractor and pursue it to settlement. If the origin transportation office was a non-Navy activity, the claims investigating officer will pursue the claim against the pack-and-crate contractor.

(e) *Insurer.* Whenever the property which is damaged, lost or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in § 751.9.

(f) *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand or cooperate in preparing the Navy's demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer, may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude seasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22420, June 24, 1974]

§ 751.9 Concurrent claims on the carrier, contractor, or insurer and the Government.

To expedite the settlement of household effects claims, the claim presented to the Government under these regulations should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the Treasurer of the United States and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

§ 751.10 Form of demand on carrier, contractor, or insurer.

Demands on a carrier, contractor or insurer should be made in writing on DD Form 1843 (appendix section A-21(b))[1] with a copy of DD Form 1845

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(appendix section A-21(d))[1] attached. Equivalent forms or formats may be used if DD Form 1843 is not available or if the claimant has not utilized DD Form 1845 in the submission of his claim.

§ 751.11 Responsibilities of the claimant regarding claims against carriers, contractors and/or insurers.

In accordance with the provisions of this chapter, the claimant is required to take all reasonable action to perfect a timely claim against any responsible carrier, contractor, and/or insurer or to assist the Navy in the perfection of a timely claim. Failure to take exceptions at the time of delivery of household goods shipments or to make notification of later-discovered damage within a reasonable time is considered sufficient grounds for deducting, from the amount otherwise payable under the provisions of this chapter, the amount of any carrier, contractor, or insurance recovery jeopardized by failure of the claimant or his agent to act promptly and reasonably.

§ 751.12 Transfer of right against the carrier, contractor, or insurer.

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

§ 751.13 Recoveries from carrier, contractor, and/or insurer.

(a) *Monetary Recoveries.* In the event that a claimant receives payment from the United States under this part, and also receives compensation from a carrier, contractor, or insurer for the same loss, the United States shall request that the claimant reimburse the Government with a view to ensuring that the claimant is not compensated twice for the same loss.

(b) *Recovered Property.* When previously lost property is found, the claimant may, at his option accept all or part of the property and return that portion of the payment he has received from the United States for the accepted property and surrender the remainder of the property to the Government. Surrendered property will be disposed of in accordance with standard disposal procedures or otherwise used for the benefit of the Government.

[43 FR 25426, June 13, 1978]

§ 751.14 Claims within provisions of other regulations.

(a) *Preemptive nature.* The provisions of this chapter are preemptive of other claims regulations in this Manual. However, claims not allowable under this chapter may possibly be allowable under Part 750, "General Claims" of this chapter.

(b) *Ship's store claims.* Claims arising from the operation of a ship's store laundry and dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

§ 751.15 Claimants.

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence.

(a) Spouse;
(b) Child or children;
(c) Father or mother, or both;
(d) Brothers or sisters, or both.

§ 751.16 Form of claim.

(a) The claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on DD Form 1842 (see

appendix section A-21-c)[1] with DD Form 1845 attached (see appendix section A-21-d).[1] If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a fourth copy of the claims form clearly marked for this purpose must be included. If DD Forms 1842 and 1845 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

[39 FR 22421, June 24, 1974]

§ 751.17 Evidence in support of claims.

(a) *General.* The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each such "Competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be property fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should submit at least one written estimate of the value from a competent person: "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the investigation report on the claim. In those cases where he knows the replacement cost to be less than the value claimed, he should include this information along with substantiating evidence.

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(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

(b) *Waiver of written estimates.* (1) Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs or replacement cost on any item for which the amount claimed is less than $100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

(c) *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this subsection.

(1) For property losses in quarters or other authorized places, a statement indicating:

(i) Geographical location;

(ii) Whether quarters were assigned or provided in kind by the Government;

(iii) Whether quarters were regularly occupied by the claimant;

(iv) Name of authority, if any, who designated the place of storage of the property, if other than quarters;

(v) Measures taken to protect the property; and

(vi) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

(i) Geographical area of the loss;

(ii) Facts and circumstances surrounding the loss, including evidences of larceny, burglary, or housebreaking (e.g., evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and

(iii) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

(i) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(ii) All bills of lading, and inventories of property shipped;

(iii) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (see §§ 751.8 and 751.9);

(iv) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(v) Where property was turned over to a quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of quartermaster, transportation officer, supply officer, or contract packer,
Date property was turned over,
Condition when property was turned over,
When and where property was packed, and by whom,
Date of shipment and re-shipment,
Copies of all manifests, bills of lading and contracts,
Date and place of delivery to claimant,
Date property was unpacked,
Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage,
Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and
Whether the last common carrier or local civilian carrier was given a clear receipt.

(vi) At the time of application for shipment of household goods, the claimant shall prepare an inventory of personal property to be shipped having a value of $200 or more. The inventory or listing shall be descriptive and in detail, and shall list those items of personal property of a value

of $200 or more *that will not otherwise appear on the carrier-prepared inventory* (i.e., an antique chair valued at $350 would not be packed in a carton but would normally be separately listed on the carrier-prepared inventory, but a $250 movie camera would normally be packed in a carton with other items vice being listed separately on the carrier-prepared inventory). The claimant-prepared inventory shall be countersigned by an appropriate individual at the office where application for the move is made. The original of the claimant-prepared inventory shall be retained by the claimant and submitted as part of his claim in the event of loss or damage to any item listed thereon. A copy thereof shall be retained by the office where application for the move is made. Nothing contained in this paragraph shall relieve the claimant from also supplying evidence to support the value of the loss. Failure to prepare the inventory/listing described supra may be considered grounds for disallowing compensation for a claimed item. Nonetheless, if a claimant fails to prepare and submit the inventory/listing described supra, for whatever reason, or inadvertently omits an item or items from the inventory, he may still be compensated for the loss or damage to items which should have been listed on the claimant-prepared inventory if the claim is accompanied by proof of ownership which may be, for instance, in the form of purchase receipts, cancelled checks, photographs, or statements of disinterested persons who observed such items in claimant's home.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(i) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(ii) A detailed statement of facts and circumstances showing applicable causes enumerated in § 751.3 (d) and (e).

(6) For property used for benefit of Government:

(i) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(ii) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(i) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(ii) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(iii) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

(d) *Privacy Act requirements.* When any claiment within the scope of this part is requested by a person acting of the Government's behalf to supply personal information about himself which will be made a part of the claim file, the person making the request shall first provide the individual with a Privacy Act statement, in duplicate, containing the particular advice prescribed in Secretary of the Navy Instruction 5211.5 series (32 CFR Part 701 Subparts F and G). The original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

[38 FR 6040, Mar. 6, 1973, as amended at 43 FR 25426, June 13, 1978]

§ 751.18 Filing of claim.

All claims coming within the cognizance of this part should, if practica-

ble, be submitted by the claimant or his authorized agent to the commanding officer or officer-in-charge of the military activity, installation, or unit nearest to the point of delivery of the goods or where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer or officer-in-charge of the activity, installation, or unit to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim does not appear to be within the scope of these regulations or could have been filed with another activity. Commanding officers and officers-in-charge will accept claims made by civilians, members of another armed force, veterans, or on behalf of a deceased person.

(a) *Air Force claim.* Claims of Air Force personnel and civilian employees of the Air Force will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Air Force installation.

(b) *Army claim.* Claims of Army personnel and civilian employees of the Army will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Army installation.

(c) *Demands on carriers.* Demands on carriers will be the responsibility of the claimant's parent service.

§ 751.19 Appointment of claims investigating officers.

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommendations on all claims presented to him under this part. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

§ 751.20 Investigation of claims.

Upon receipt of a claim filed in accordance with the provisions of this part, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects. With regard to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) as it pertains to obtaining personal information from claimants or witnesses, § 751.17, as well as appropriate parts of 32 CFR Part 750.

[38 FR 6040, Mar. 6, 1973, as amended at 43 FR 25426, June 13, 1978]

§ 751.21 Recovery action in transportation and storage losses.

(a) *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

(b) *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identi-

fied properly with the company's claim or reference symbols.

(c) *Approval or denial of concurrent claim by carrier, contractor, or insurer.* (1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the claims investigating officer shall determine that the offered settlement is representative of the contractual liability for which the claim has been made, then forward the settlement to the adjudicating authority. The adjudicating authority will review the settlement and forward it for deposit to the appropriate account.

(i) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speed-letter format is shown in appendix section A-21(e).[1]

(ii) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to § 751.13, is less than the amount received, remittance may be made by personal check or money order payable to the Treasurer of the United States.

(d) *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, and/or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from any other party. A sample certificate is contained in appendix section A-21(f).[1] If any recovery has been obtained, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, and/or insurer is still pending, the claimant will advise them to address all correspondence to him in care of the claims investigating officer of the command, unit, or activity at which the claim was filed, Attention: Claims Investigating Officer. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, and/or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

(e) *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within 10 days after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

(f) *Unjustified denials by the carrier, contractor or insurer*—(1) *Government bill of lading carriers.*—(i) *Action by the claims investigating officer.* If a Government bill-of-lading carrier or its insurer has refused to acknowledge or respond to a claim within a reasonable time (normally 30 days if applicable regulations or agreements do not specify another time limit), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, then, in

[1] Filed as part of original document.

addition to initiation of administrative action as appropriate under Interstate Commerce Commission Regulations, military tender of service, or other applicable regulation or agreement, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. A copy of the referral letter with enclosures will be sent to the origin-transportation officer. The carrier should be notified of this action by a copy of the referral or by separate correspondence.

(ii) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a final demand on the carrier when liability is clear. The final demand shall set forth the exact amount of liability, in view of the supporting evidence, owed by the carrier under the terms of the Government bill of lading, the basis for the determination of the amount demanded, and notification that the demand is a final demand and that the file will be forwarded for involuntary collection by withholding amounts due from the Navy if payment is not received within 30 days. If, after 30 days from the date of the final demand, reimbursement from the carrier has not been received, the case file should be forwarded to the Navy Regional Finance Center, Code FF330, Washington, D.C. 20371, requesting that the amount demanded by the final demand be setoff against subsequent Government bill of lading earnings. The amount of withholding requested must be the amount of the final demand. If the amount of the final demand is in error, a new 30-day final demand must be made. In general, a carrier should not be permitted to continue negotiations after a final demand has been made. If a misunderstanding between the claims investigating officer and the carrier is obvious from the file, negotiation prior to a final demand may be desirable. Under normal circumstances, however, if the claims investigating officer and the carrier have been unable to reach agreement, a final-demand amount should be determined and a final demand made. The carrier should not be permitted to further delay payment of his legal liability by meaningless negotiation.

(2) *Nontemporary storage warehousemen*—(i) *Action by the claims investigating officer.* If a nontemporary warehouseman or his insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. The warehouseman should be notified of this action by a copy of the referral letter or by separate correspondence.

(ii) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a further demand on the warehouseman or his insurer when liability seems clear. If recovery is not affected within 30 days from this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the appropriate area Military Traffic Management Command (MTMC) Headquarters for final determination of liability by the officer administering the warehouseman's basic agreement.

(iii) *Pack-and-crate contractors.* When the origin Navy personnel property office, or the destination claims investigating officer on a shipment originating at a non-Navy transportation office, fails to receive adequate response or recovery from a pack-and-crate contractor within 60 days or when a claim is denied by the contractor without sufficient justification, the matter should be referred immediately to the officer administering the contract under which the services were performed. In the case of a shipment originating at a non-Navy transportation office, the referral should be made via the origin transportation office. Each referral will include a full

statement, with supporting evidence, substantiating that the contractor's denial of the claim is unjustified or that the settlement offer is inadequate. Due to the relatively short duration of pack-and-crate contracts, it is desirable to expedite processing of unjustified denials.

(iv) *Other carriers, contractors, or insurers.* Unjustified denial by other carriers, contractors, or insurers will be referred by the claims investigating officer to the adjudicating authority. The adjudicating authority will review the entire file and shall make a further demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not received within 30 days from the date of this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the Judge Advocate General for additional recovery action.

(g) *Processing of carrier checks.* On occasion, a carrier will send a check for an amount less than the adjudicated amount of the claim against the carrier, and which contains a standard liability release statement on the reverse thereof. Such a check should *not* be deposited. The check should be returned to the carrier with a demand for the full amount due. Language as follows is appropriate:

> Your check in the amount of $(amount) in response to our letter (date) is hereby returned as not being an acceptable settlement offer. The adjudicated amount of your liability in this case is $(amount), and demand is hereby made for the full amount. Unless your check for the full amount is received within 30 days, the full amount will be set off from the amounts otherwise due to you.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22421, June 24, 1974; 43 FR 25426, June 13, 1978; 43 FR 33241, July 31, 1978]

§ 751.22 Preparation of claims investigating officer's report.

(a) *General.* The claims investigating officer will prepare a written report of investigation including his recommendations. Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority. The claims investigating officer may, at his discretion, utilize DD Form 1844 (see appendix A-21 (h))[1] as a worksheet in appropriate cases and attach a copy of the form to his report.

(b) *Regular claims procedure.* The claims investigating officer's report shall include a statement of all additional facts and circumstances not pointed out by the claimant, including any facts overlooked or incorrectly stated by the claimant in his statement of the facts and circumstances of the incident, and specific recommendations regarding any items for which reimbursement in an amount less than the full amount claimed, less normal depreciation, if applicable, is recommended due to preexisting damage, inflated estimates of repair, economically repairable property claimed as beyond repair, salvage value of property, or other factors. Specific recommendations shall also include designation of those repair and replacement costs for which written estimates have been waived in accordance with § 751.17(b) and an explanation of any unusual circumstances justifying nonroutine processing of the claim. Any convenient format can be used for the written report as long as all relevant information is included. Appendix section A-21-g[1] shows a sample report. The claims investigating officer will complete and sign part III of DD Form 1842 (see appendix section A-21c(2))[1] when investigation of the claim is complete. Report control symbol JAG 5890-2 is assigned to this report.

(c) *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report

[1] Filed as part of original document.

and exhibits may be found shall be included.

(d) *Small-claims procedure.* When the total amount claimed is $500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (see appendix section A-21c(3))[1] in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable.

(e) *Forwarding of claim.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

(f) *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) and Secretary of the Navy Instruction 5211.5 series (32 CFR Part 701 Subparts F and G). Any indication of noncompliance shall be explained either in the investigative report on the forwarding endorsement and, when required, remedied in accordance with section 0308 of the Manual of the Judge Advocate General. The claims adjudicating authority has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

[1] Filed as part of the original document.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22422, June 24, 1974; 43 FR 25427, June 13, 1978]

§ 751.23 Action by commanding officer.

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (See § 751.24(e).) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, and replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved.

(a) *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigat-

ing officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

(b) *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

(c) *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in appendix section A-21(j).[1]

§ 751.24 Adjudicating authority.

(a) *Claims by Navy personnel.* (1) The following are authorized to adjudicate and authorize payment to personnel claims up to $15,000:

(i) The Judge Advocate General,

(ii) Deputy Judge Advocate General,

(iii) Any Assistant Judge Advocate General,

(iv) The Deputy Assistant Judge Advocate General (Claims),

(v) Commandants of Naval Districts and their staff judge advocates,

(vi) Officers in charge of naval legal service offices,

(vii) The Staff Judge Advocate attached to Naval Supply Center, Oakland, and Naval Activities, United Kingdom.

(2) The following are authorized to adjudicate and authorize payment of personnel claims up to $10,000:

The Staff Judge Advocate attached to:

(i) Naval Base, Guantanamo;

(ii) Naval Base, Roosevelt Roads;

(iii) Naval Station, Panama Canal; and

(iv) Headquarters Support Activity, Taipei.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000:

(i) Heads of naval legal service branch offices;

(ii) Any judge advocate attached to a naval legal service office when specifically designated by the officer in charge;

(iii) The Staff Judge Advocate attached to Naval Supply Center, Puget Sound;

(4) All Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to $1,000;

(5) Any Navy judge advocate may be authorized to adjudicate personnel claims up to $15,000 when specifically designated by the Judge Advocate General;

(6) Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of personnel claims up to $500; and

(7) Authorization to adjudicate and authorize payment of personnel claims up to a specific dollar amount is indicated supra, or by separate correspondence from the Judge Advocate General. Authorization to adjudicate claims up to a specific dollar amount is separate and distinct from holding an allotment. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Commands holding allotments from the Judge Advocate General are indicated in § 751.30. Suballotees are not listed.

(b) *Claims by Marine Corps personnel.* Claims by Marine Corps personnel, both military and civilian, are adjudicated and payment authorized by only the following:

[1] Filed as part of original document.

(1) Commandant of the Marine Corps;
(2) Deputy Chief of Staff for Manpower;
(3) Director, Personnel Services Division;
(4) Head, Personal Affairs Branch, Personnel Services Division;
(5) Head, Claims Section Personal; Affairs Branch; and
(6) Deputy Head, Claims Section, Personal Affairs Branch.

(c) *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this part and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated-fund activities should be referred directly to the appropriate nonappropriated-fund activity for investigation and payment.

(d) *Partial payments when hardship exists.* Every instance of loss or damage cognizable under this chapter can be expected to cause some degrees of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. Each authorization of partial payment must be accompanied by:

(1) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a statement that he is aware of the penalties imposed by Title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personal Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(2) A statement by the Claims Investigating Officer confirming that the claimant is a proper claimant under the provisions of this part and setting forth his opinion regarding the reasonablenes of the estimated total value of the claim, the extent to which the claim has been substantiated, the amount and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(3) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this part and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this subparagraph. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(e) *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in paragraph (a) of this section, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this

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chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is specified in Navy Comptrolier Manual section 023304 paragraph 3. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

(f) *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22422, June 24, 1974; 43 FR 25427, June 13, 1978]

§ 751.25 Limitation on agent or attorney fees.

(a) *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243), the statutory authority underlying this part, provides in section 243 that:

> No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240–243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240–243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

(b) *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in § 751.39.

(c) *Other prohibition.* The provisions concerning an attorney's fee set forth in (a) above does not authorize a fee in those cases where a fee is prohibited for other reasons (see SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

§ 751.26 Separation from service.

Separation from the service or termination of employment shall not bar military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise failing within the provisions of these regulations when such claim accrued prior to separation or termination.

§ 751.27 Meritorious claims not otherwise provided for.

Meritorious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243) which are not otherwise provided for in this chapter, may be forwarded via official channels to the Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

§ 751.28 Reconsideration.

(a) A claim may be reconsidered which was previously disapproved in whole or in part even though final settlement has been made when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or subsequently submitted. A request for reconsideration shall be made in writing to the adjudicating authority originally acting on the claim and should include all documents which have been returned to the claimant. All requests for reconsideration shall be made within 6 months from the date the claimant received notice of the initial adjudication of his claim. Any adjudicating authority shall reconsider a claim upon which he has originally acted upon the request of a claimant

or someone acting in the claimant's behalf and may settle it by granting such relief as may be warranted. If it is determined that the original action was incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. An adjudicating authority may also, on his own initiative, reconsider a claim which he has denied in whole or in part.

(b) If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire file and the adjudicating authority's recommendation, to the nearest appropriate $15,000 adjudicating authority for final disposition. Final reconsideration of claims initially adjudicated by $15,000 adjudicating authorities will be made by the Judge Advocate General.

(c) The forwarding endorsement of all adjudicating authorities shall contain specific reasons why the claim, in whole or in part, was denied, or why the requested relief was not granted, and shall address the specific points or complaints raised by the claimant's request for reconsideration.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22422, June 24, 1974; 43 FR 25427, June 13, 1978]

§ 751.29 Authorization for issuance of instructions.

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this part.

§ 751.30 List of commands that have received funding authority and accounting data from the Judge Advocate General.

The following is a list of commands (allottees) that have received funding authority and accounting data from the Judge Advocate General. There are personnel attached who have adjudicating authority and are capable of processing claims filed pursuant to 31 U.S.C. 240–243 (see § 751.24), or in the alternative, claims are adjudicated by personnel attached to another command, and in some instances adjudication is accomplished through a suballotment. Suballottees are not listed. The commands listed in this section are grouped for simplicity by the dollar amount adjudicating authority of personnel. *The listing contained in this section does not constitute adjudicating authority. Adjudicating authority by dollar amount is contained in § 751.24(a).*

(a) *$15,000 Authorities.*

1. NAVLEGSVCOFF Philadelphia
2. NAVLEGSVCOFF Norfolk
3. NAVLEGSVCOFF Charleston
4. NAVLEGSVCOFF Great Lakes
5. NAVLEGSVCOFF San Diego
6. NAVLEGSVCOFF Treasure Island
7. NAVLEGSVCOFF Seattle
8. NAVLEGSVCOFF Pearl Harbor
9. NAVLEGSVCOFF Newport
10. NAVLEGSVCOFF Memphis
11. NAVLEGSVCOFF Corpus Christi
12. NAVLEGSVCOFF Washington Navy Yard
13. NAVLEGSVCOFF Pensacola
14. NAVLEGSVCOFF Jacksonville
15. NAVLEGSVCOFF Naples
16. NAVLEGSVCOFF Subic
17. NAVLEGSVCOFF Guam
18. NAVLEGSVCOFF Yokosuka
19. COMEIGHT
20. COMNAVACT United Kingdom
21. NSC Oakland

(b) *$10,000 Authorities.*

22. NAVSTA Panama Canal
23. NAVBASE Roosevelt Roads
24. COMNAVBASE GTMO
25. HEDSUPPACT Taipei

(c) *$5,000 Authorities.*

26. NAVLEGSVBROFF New London
27. NAVLEGSVBROFF Key West
28. NAVLEGSVBROFF Orlando
29. NAVLEGSVBROFF Whidbey Island
30. NAVLEGSVBROFF Lemoore
31. NAVLEGSVBROFF Rota
32. NSC Puget Sound

(d) *$1,000 Authorities.*

33. NSC Charleston
34. NAS Kingsville
35. NAS Chase Field, Beeville
36. NAS Pensacola
37. NAS Brunswick
38. NAS Bermuda
39. NAS Meridian
40. NAF Sigonella
41. NAF Atsugi
42. NAVSTA Mayport
43. NAVSTA Adak
44. NAVSTA Keflavik
45. NAVSTA Midway

46. COMSUBLANT Norfolk
47. COMOCEANSYSLANT Norfolk
48. COMIDEASTFOR
49. COMFLEACTS Okinawa/NAF Kadena
50. NRMC Oakland
51. NAVPGSCOL Monterey
52. CBC Gulfport
53. NAVAIRTESTCEN Patuxent River
54. NAVAIRENGCEN Lakehurst
55. NAVORDFAC Sasebo
56. NTC Morocco
57. NAVCOMMSTA Harold E. Holt
58. NAVSUPPO La Maddalena
59. NAVSECGRUACT Misawa

(e) In addition to the foregoing, naval officers attached to the following commands have been designated $500-adjudicating-authorities by name by the Judge Advocate General by separate correspondence in accordance with § 751.24(a)(6). Some of the following commands hold an individual allotment from the Judge Advocate General, and others utilize a sub-allotment.

1. NSC Oakland,
2. NSC NFK,
3. NSC Pearl Harbor,
4. RESUPSHIP Pascagoula,
5. NSD, Guam,
6. NAVSCSCOL Athens,
7. NSD Subic Bay,
8. NAS Jacksonville,
9. NSD Yokusuka.

[43 FR 25428, June 13, 1978]

PART 752—ADMIRALTY CLAIMS

Sec.
752.1 Scope.
752.2 Organization.
752.3 Claims against the Navy.
752.4 Affirmative claims.
752.5 Salvage.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031, 5148, and 7621-7623; 32 CFR 700.206 and 700.1202.

SOURCE: 39 FR 9962, Mar. 15, 1974, unless otherwise noted.

NOTE: This Part 752 is derived from chapter XII of the Manual of the Judge Advocate General.

§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property.

§ 752.2 Organization.

(a) *Administrative authority of the Secretary of the Navy.* The Secretary of the Navy has administrative authority for settlement and direct payment, where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1970)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623 (1970)).

(b) *Admiralty Division of the Office of the Judge Advocate General.* The Navy's admiralty-tort claims are handled in the Admiralty Division of the Office of the Judge Advocate General. In addition, there are stationed in several district law centers, and in certain other commands, judge advocates who are also trained admiralty officers, and they act locally in admiralty matters.

(c) *Mission and policy.* The primary mission of the Admiralty Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) *Admiralty-tort claims.* As indicated above, the Admiralty Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) *Admiralty-contract claims.* Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) *Damage caused by Navy contract stevedores.* Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) *Resolving conflicts.* Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty Division and the Office of Counsel, MSC, as to how the incident should be handled.

§ 752.3 Claims against the Navy.

(a) *Settlement authority.* 10 U.S.C. 7622 (1970), as amended by Public Law 92-417, 86 Stat. 654, provides settlement authority for

(1) Damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

The limit on the Secretary's settlement authority is a payment of $1,000,000. A claim which is settled for an amount over $1,000,000 is certified to Congress. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $10,000. Under the Secretary's delegation, settlements not exceeding $10,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Admiralty). Authority has also been delegated to Commander in Chief, U.S. Naval Forces, Europe, and to Commander, Sixth Fleet, to pay admiralty claims against the Navy not exceeding $1,000, and to Commandant, TENTH Naval District, for damage to fishing equipment arising in Culebra-Vieques waters, not to exceed $1,000.

(b) *Settlement is final.* The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) *Settlement procedures.* Where the amount paid is over $10,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the

approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for executed releases. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of the appropriation "Claims, Department of Defense."

(d) *Limitation period.* The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) *Matters in litigation.* When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

§ 752.4 Affirmative claims.

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 7623 (1970), and is the reciprocal of 10 U.S.C. 7622 (1970), referred to in § 752.3.

(b) *Scope.* 10 U.S.C. 7623 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416 (1970)).

(d) *Litigation.* 10 U.S.C. 7623 does not apply to any claim where suit is filed. If the Admiralty Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

§ 752.5 Salvage.

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365 (1970). Prosecution of such claims is handled in the first instance by the Assistant Supervisor of Salvage, U.S. Navy, One World Trade Center, New York, NY 10048. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage is unsuccessful in

making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367 (1970).

[39 FR 9962, Mar. 15, 1974, as amended at 41 FR 26866, June 30, 1976]

PART 753—[RESERVED]

PART 754—NAVY AFFIRMATIVE SALVAGE CLAIMS

Sec.
754.1 Settlement of Navy affirmative salvage claims.
754.2 Per diem rates for salvage services.
754.3 Leasing of Navy salvage and oil pollution abatement equipment.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2667, 5031, and 7361-7367.

§ 754.1 Settlement of Navy affirmative salvage claims.

(a) *Authority.* Under 10 U.S.C. 7365, the Secretary of the Navy, or his designee, may consider, ascertain, adjust, determine, compromise, or settle and receive payment of any claim by the United States for salvage services rendered by the Department of the Navy.

(b) *Delegation of authority.* Each of the following has been designated by the Secretary of the Navy to exercise the authority contained in 10 U.S.C. 7365:

(1) The Commander, Naval Sea Systems Command, Department of the Navy.

(2) The Supervisor of Salvage, Naval Sea Systems Command, Department of the Navy.

(3) The Assistant Supervisor of Salvage, Naval Sea Systems Command, Department of the Navy, Room 1313, Federal Office Building, 90 Church Street, New York, N.Y. 10007.

[42 FR 16622, Mar. 29, 1977]

§ 754.2 Per diem rates for salvage services.

(a) Effective February 1, 1982, and subject to the rules set forth in paragraphs (b) through (g) of this section, the following rates per day of 24 hours or part thereof have been established for salvage services rendered by the Department of the Navy:

(1) Ships, tugs and floating craft:

Salvage ship (ATS)	$25,000
Salvage ship (ARS)	23,000
Fleet tug (ATF)	21,000
Fleet tug (T-ATF 166):	
With salvage equipment/crew	20,000
Without salvage equipment/crew	18,000
Rescue ship (ASR):	
With saturation diving systems	24,000
Without saturation diving systems	22,000
Large tug (YTB)	5,000
Medium tug (YTM)	4,000
Small tug (YTL)	3,000
Floating crane (YD) (200 Ton)	7,500
Diving tender (YDT)	3,000

Rates for other types of ships used in salvage operations will be established on a case-by-case basis, with consideration being given to their special features as required for the particular operation.

(2) *Harbor clearance craft:* Rates for harbor clearance craft, pulling barges, launches, and support equipment in general will be decided on a case-by-case basis.

(3) *Special equipment:* Bottom habitats, submersible vehicles, special surface navigation systems, and underwater search and navigation systems will be charged at rates to be determined on a case-by-case basis.

(4) *Supernumerary personnel.* The rates in paragraph (a)(1) of this section for ships and tugs include charges for their normal crews. Additional personnel such as Salvage Masters, Lift Masters, Harbor Clearance Team members, and extra diving crews will be charged for at rates established in the Navy Comptroller Manual and based on normal military pay scales. Per diem and travel expenses will be charged at cost.

(b) The per diem rates set forth in paragraph (a) of this section apply worldwide and are charged to pay the United States for the use of its Navy ship, operating crew, and towing hawser. If, as in the case of a stranding, special salvage equipment such as beach gear, pumps, compressors, and the like is required, then a per diem charge is also made for the use of that equipment. In addition, repair materials consumed and equipment lost, damaged, or expended are billed at replacement cost.

(c) When used as the basis for billing, the per diem charges set forth in paragraphs (a) and (b) of this section are normally made for the total elapsed time spent by the Navy ship performing the service from the moment she leaves her berth, or is diverted from her previous course, to the time she returns to her berth or resumes her prior voyage at the approximate point of diversion. The charges are independent of the values involved; and the user will be billed in the full amount, regardless of whether the vessel is saved or lost; that is, irrespective of the ultimate success or failure of the salvage operation.

(d) An exception to the method of calculating per diem charges set forth in paragraphs (a) through (c) of this section is made if a distressed commercial vessel carries a substantial amount of Government-owned uninsured cargo and if her distress occurs in areas (such as the mid-Pacific) where the Navy alone maintains facilities capable of conducting major salvage operations. Under these conditions, if Navy assistance is promptly requested, then no charge is made unless the Navy ship actually reaches and helps the stricken vessel either before she is saved or before she and her cargo are lost.

(e) The extent of the salvage services rendered by naval activities in any given case will, of necessity, be governed by the magnitude of the salvage effort required and the problems encountered and the availability of Navy salvage assets. Accordingly, the nature and amount of salvage equipment and other naval equipment, supplies, and materials will vary in each case. In addition, the number of naval personnel, both military and civilian (Civil Service), and their required specialized skills will also vary in each case. For these reasons it is not feasible to detail in this section the rates, costs, or charges for each item of naval equipment, material, supplies or personnel, that may be utilized in any given salvage operation. It is the policy of the Supervisor of Salvage to utilize the Navy Comptroller Manual (NAVSO P-1000) as the basis for determining the costs and charges for naval equipment, for which there are no published rates established by this section or previously determined by the Supervisor of Salvage. The Navy Comptroller Manual also provides a basis for computing statistical charges where salvage services are rendered on "in-house" Navy salvage operations, and to Military Sealift Command, Maritime Administration, and other non-Navy public vessels and aircraft. However, in determining the costs and charges for equipment, supplies, materials, and personnel the Supervisor of Salvage refers to the Navy Comptroller Manual for guidance only; he is not required to adhere to the rates set forth therein.

(f) Submission of Navy salvage claims on a per diem basis is solely a matter of administrative convenience and policy. That policy is not a waiver or surrender of the U.S. legal right to claim on a salvage-bonus basis in any individual case. If per diem billing is rendered, then it is submitted on the express condition that it be promptly paid in full; and until receipt by the Department of the Navy of such payment, all salvage rights are reserved, including the right to withdraw the per diem billing without notice and present claim on a salvage-bonus basis.

(g) The statutory authority of the Secretary of the Navy to provide salvage facilities for private vessels and to settle claims arising from such activity appears in 10 U.S.C. 7361-7367. This authority does not obligate the United States or the Department of the Navy to maintain salvage facilities in excess of its own needs nor to render salvage assistance on all occasions. The policy of the Department of the Navy, however, is to assist in the salvage of privately owned vessels when such assistance is required and requested and where adequate privately owned salvage facilities do not exist or are not readily available.

[31 FR 16619, Dec. 29, 1966, as amended at 35 FR 5946, Apr. 10, 1970; 36 FR 3117, Feb. 18, 1971; 42 FR 16622, Mar. 29, 1977; 47 FR 6011, Feb. 10, 1982]

§ 754.3 Leasing of Navy salvage and oil pollution abatement equipment.

(a) *Purpose.* To delegate the authority for the leasing of Navy salvage

equipment and oil pollution abatement equipment under control of the Department of the Navy to private salvage companies and to establish policy governing such leases.

(b) *Background.* (1) 10 U.S.C. 7362 authorizes the Secretary of the Navy to charter, lease, or otherwise transfer to private salvage companies salvage equipment to be used to support organized offshore salvage facilities for periods of time that the Secretary considers appropriate. The phrase "offshore salvage" concerns situations involving refloating stranded or sunken ships in exposed locations along the coasts, or on reefs or islands. Leases under the authority of 10 U.S.C. 7362 may involve salvage equipment only.

(2) 10 U.S.C. 2667 authorizes the Secretary of a military department whenever he considers it advantageous to the United States to lease personal property upon such terms as he considered will promote the national defense or be in the public interest. For the purposes of this section, leases under the authority of 10 U.S.C. 2667 may involve both Navy salvage equipment and oil pollution abatement equipment.

(c) *Policies.* (1) Prior to negotiation of a lease pursuant to the authority of 10 U.S.C. 2667 or 7362 it must be determined that:

(i) The equipment is not needed for public use during the period of the lease;

(ii) The proposed lease should not render the property unsuitable for future military use;

(iii) The equipment is not "excess property" as defined by 4 U.S.C. 472;

(iv) The equipment or comparable equipment is not otherwise reasonably available from commercial sources.

(2) The term of any lease entered into pursuant to this section shall not exceed two years.

(3) Leases entered into pursuant to the authority of 10 U.S.C. 2667 require a determination that the lease will be advantageous to the United States and will promote the national defense or be in the public interest. The Secretary determines that such a finding has been made if one or more of the following situations is found to exist:

(i) The presence of a petroleum product or other hazardous substance in United States waters caused by any means which present an imminent danger to human life or property, public health, or the national environment;

(ii) The grounding, stranding, or sinking of any vessel in United States navigable waters or contiguous zones thereof which presents a danger to others, inhibits commerce, or poses an inconvenience to other vessels proceeding in the area;

(iii) The grounding, stranding, or sinking of any vessel which may present the danger of an oil spill of the character referred to in paragraph (c)(3)(i) of this section.

(iv) A situation in other than United States waters involving the grounding, stranding, or sinking of any vessel or the spillage of a petroleum product or other hazardous substance presenting an imminent danger to life, property, or the national environment where:

(A) A United States flag ship or other commercial vessel owned or operated by public or private United States interests is involved; (B) United States treaty obligations require or permit such aid; (C) the lease of Navy equipment would result in substantial good will being generated towards the United States; (D) the situation might result in an international incident involving potential adverse consequence to the United States.

(4) Leases executed pursuant to this section shall contain comprehensive indemnification and hold harmless provisions whereby users of Navy salvage equipment or oil pollution abatement equipment shall assume liability, including liability for loss of or damage to the equipment, and for third-party bodily injury and property damage.

(5) The proposed lessee must stipulate in writing that comparable equipment is not reasonably available from commercial sources.

(d) *Lease.* (1) Leases entered into pursuant to the authority of 10 U.S.C. 2667 or 7362 shall contain the following provisions:

(i) A description of the specific commercial salvage operation or pollution

incident in which the equipment may be used.

(ii) A stipulation that the equipment may be utilized only in accordance with its designed operational purpose.

(iii) A provision requiring the lessee to maintain, protect, and preserve the equipment in accordance with the best commercial practices.

(iv) A provision permitting the Government to revoke the lease at any time, unless the Secretary shall have determined that the omission of such a provision will promote the national defense or be in the public interest.

(v) A right in the Government to revoke the lease during the national emergency declared by the President.

(vi) A provision prohibiting the lessee from entering into a sublease without the prior written approval of the Supervisor of Salvage, Naval Sea Systems Command.

(2) In addition to the foregoing terms and conditions:

(i) A lease covering the use of salvage equipment under the authority of 10 U.S.C. 7362 shall provide that the equipment will be used to support offshore salvage facilities for the term of the lease or for such lesser period as the Supervisory of Salvage, Naval Sea Systems Command, considers appropriate.

(ii) A lease of salvage equipment or oil pollution abatement equipment under the authority of 10 U.S.C. 2667 shall provide that, if and to the extent that the leased property is later made taxable by state or local governments under an act of Congress, the lease shall be renegotiated.

(e) *Rates.* (1) Fair market value of the equipment to be leased shall be charged in accordance with Department of Defense Instruction 7230.7.

(2) With respect to salvage equipment leased pursuant to 10 U.S.C. 7362:

(i) Rental rates set forth in § 754.2 shall be used when applicable.

(ii) Money rental received shall be credited to appropriations for maintaining salvage facilities by the Department of the Navy. However, if the amount received in any year exceeds the cost incurred by the Navy during that year in giving and maintaining salvage services, the excess shall be covered into the Treasury.

(3) With respect to salvage equipment or oil pollution abatement equipment leased pursuant to 10 U.S.C. 2667:

(i) The lease may provide for the maintenance, protection, repair, or restoration by the lessee of the equipment leased as part or all of the consideration for the lease.

(ii) Money rentals received directly from the lease shall be covered into the Treasury as miscellaneous receipts.

(iii) Payment for utilities or services furnished to the lessee under the lease by the Government may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(f) *Delegation.* (1) The Supervisor of Salvage, Naval Sea Systems Command, is authorized to take all necessary action in accordance with this section to grant, execute, amend, administer, and terminate leases of Navy salvage equipment and oil pollution abatement equipment to private salvage companies. The authority delegated herein will be exercised under the direction of the Chief of Naval Operations, the Chief of Naval Material, and the Commander, Naval Sea Systems Command.

(2) Proposed leases of salvage equipment or oil pollution abatement equipment under paragraphs (c)(3)(iv) (C) and (D) of this section or in situations that are of obvious sensitivity or that may be of Secretarial interest should be reported to the Assistant Secretary of the Navy (installations and Logistics).

(g) *Maintenance of records.* The Supervisor of Salvage, Naval Sea Systems Command, will maintain a record system from which management information regarding leases executed pursuant to this section may be compiled and furnished, when required.

[42 FR 16622, Mar. 29, 1977]

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Sec.
755.1 Statutory authority.
755.2 Scope.
755.3 Claims not cognizable.
755.4 Limitations of applications.
755.5 Complaint by injured party.
755.6 Investigation.
755.7 Action to be taken by commanding officer and higher authority where offenders are members of one command.
755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.
755.9 Reconsideration.
755.10 Effect of court-martial proceedings.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5031, and 5148; Exec. Order No. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

SOURCE: 35 FR 13109, Aug. 18, 1970, unless otherwise noted.

NOTE: This Part 755 is Chapter X of the Manual of the Judge Advocate General of the Navy.

NOTE: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this Part 755 as "the UCMJ". The Manual for Courts-Martial, United States, 1969 (E.O. 11476 of June 19, 1969) is referred to in this Part 755 as "MCM 1969".

§ 755.1 Statutory authority.

This part outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces (Article 139, Uniform Code of Military Justice, 10 U.S.C. 939).

§ 755.2 Scope.

Claims for damage, loss, or destruction of property caused by a person or persons in the naval service, subject to the limitations in this section, are within the provisions of Article 139, UCMJ only if such damage, loss, or destruction is caused by riotous conduct, acts of depredation, or acts showing such reckless and wanton disregard of the property rights of others that a willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ are cognizable under Article 139. However, redress for damages resulting from such acts is not to be confused with disciplinary action under Article 109 or any other article of the UCMJ. (See § 755.10.) Charges against pay under the regulations in this part shall be made against the pay of persons shown to have been principal offenders or accessories. Membership in a certain organization or detachment and presence at the scene at the time the damages were sustained are not sufficient in themselves to make a person a principal or an accessory. There must be some evidence of active or passive participation.

§ 755.3 Claims not cognizable.

The following claims are not payable under this part.

(a) *Claims payable under other regulations:* Claims for damage, loss, or destruction of property which are payable by the Government under the provisions of the general, personnel, or foreign claims regulations set forth in Parts 750 and 751 of this subchapter and Chapter XXII of the Manual of the Judge Advocate General, or under admiralty claims procedure set forth in Part 752 of this subchapter. No charge will be made under these regulations against the pay of any person in the naval service to reimburse the claimant or the Government for payments warranted under other regulations or other statutes.

(b) *Claims resulting from simple negligence:* Claims for damage, loss, or destruction of property resulting from simple negligence, whether or not within the scope of employment.

(c) *Claims of subrogees:* Any portion of a loss covered by insurance, whether carried by the offender, the claimant, or a third party.

(d) Claims for personal injury or death.

(e) *Acts or omissions within the scope of employment:* Claims for damage, loss, or destruction of property resulting from acts or omissions, while the offender is acting within the scope of his employment.

(f) *Absence of riotous or violent conduct:* Claims arising from larceny, wrongful appropriation, forgery, or

deceit, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous or violent conduct; or claims for damages arising from breach of contract.

(g) *Government property:* Reimbursement for damage, loss, or destruction of property of the United States.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 45 FR 8600, Feb. 8, 1980]

§ 755.4 Limitations of applications.

(a) *Time limitations.* In order for a claim to be cognizable under Article 139, UCMJ, a complaint out of which such claim arises must have been made to military authority within 30 days of the date of the incident.

(b) *Aliens.* Claims of aliens under Article 139, UCMJ, in addition to the exclusionary limitations of the regulations in this part, are subject to all laws and regulations controlling payments to aliens in effect at the time of action on the claim. If the claimant is a national of a country at war with the United States, or an ally of such foreign country, the claim will not be approved unless it be determined that the claimant is friendly to the United States.

(c) *Limitation of amount of assessment.* No assessment exceeding the amount of $250 will be made against the pay of any offender under the provisions of Article 139, UCMJ for any single act or incident.

(d) *Acts of property owner.* When the acts or omissions of the owner, his lessee, or his agent were a proximate contributing factor to the loss or damage of the property involved, assessment will not be made against any offender in excess of that amount for which he is found to be directly and solely responsible.

(e) *Only direct damages considered.* Assessment will be made only for direct physical damages. Indirect, remote, or inconsequential damage will not be considered.

§ 755.5 Complaint by injured party.

(a) *Ordering investigation.* Whenever a complaint is made to a commanding officer that willful damage has been done to property or that property has been wrongfully taken by members of the naval service, and the nature of the damage or wrongful taking is within the purview of Article 139, UCMJ, the commanding officer, if he has authority to convene special courts-martial and if an alleged offender is a member of his command, shall order an investigation of the matter. If the alleged offender is not a member of his command, he shall forward the complaint and all evidence which can be obtained locally to the commanding officer of the alleged offender. If the command of an alleged offender is not known, the complaint and all evidence which can be obtained locally shall be sent to the Chief of Naval Personnel or the Commandant of the Marine Corps, whichever is appropriate, for forwarding. If the commanding officer of an alleged offender does not have authority to convene special courts-martial, he shall forward the complaint to his superior with such authority, who shall, for the purposes of Article 139, UCMJ, be considered the commanding officer of the offender. If the incident complained of occurred at a place remote from the command of the alleged offender, and the commanding officer of the alleged offender so requests, the commanding officer of the naval activity located nearest the place of the incident shall order an investigation of the matter as required by Article 139, UCMJ and the regulations in this part. Upon completion of such investigation, the record thereof shall be forwarded to the commanding officer who requested the investigation for action required by § 755.7. Where more than one offender or more than one command is involved, the matter shall be handled by a single investigation, if practicable. In this connection see Section 0107 of the Manual of the Judge Advocate General and § 755.8 of this subchapter.

(b) *Advice to claimant.* The commanding officer who orders the investigation of the complaint shall fully advise the claimant by the most practicable means, that:

(1) In order for a claim to be cognizable under Article 139, UCMJ, the claimant must be within the provisions of § 750.50.

(2) A claim shall be presented, if practicable, in triplicate. It should contain a statement setting forth the amount of the claim, insurance coverage, and available detailed facts and circumstances surrounding the incident from which the claim arose. When there is more than one claimant as a result of a single incident, each such claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized agent or representative. The appropriate portions of § 750.13 set forth additional information and evidence which ordinarily should be supplied by a person making claim for damage or loss of property.

(3) Such claim must be submitted to the investigating body as expeditiously as possible and not later than 30 days from the date of this advice.

(1 CFR 18.14, and Part 21, Subpart B)

[35 FR 13109, Aug. 18, 1970, as amended at 41 FR 26866, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

§ 755.6 Investigation.

(a) *General.* The procedure for redress of injuries to property (Article 139, UCMJ) is accomplished by the use of a formal investigation or a court of inquiry. The claim is the subject of inquiry by either of these bodies, and the rules governing the appropriate type of investigation are applicable.

(b) *Fact-finding body.* The fact-finding body appointed to investigate a complaint under Article 139, UCMJ shall consist of from one to three commissioned officers. Subject to the provisions of the regulations in this part, pertinent portions of §§ 750.6 and 750.7 respecting matters to be ascertained in investigating property damage are applicable. The claim of the owner or custodian of the property involved shall be made an enclosure to the record of proceedings of the fact-finding body.

(c) *Statutory requirements and powers.* Under the authority of Article 139, UCMJ, witnesses may be summoned to testify at the investigation in the same manner as for courts-martial. See paragraph 115, MCM. However, when an investigation is convened to inquire into other matters in addition to investigating a complaint under Article 139, UCMJ, the power of subpoena shall not be used to compel the attendance of witnesses whose testimony is not directly related to the Article 139 claim. Witnesses before such investigations shall be examined on their oath or affirmation. Depositions, documents, and other evidence may be received in evidence.

(d) *Rights of an alleged offender.* An alleged offender shall, if practicable, be accorded the rights of a party. See Subpart J of Part 719 of this subchapter. If such rights are not accorded an alleged offender, and such rights have not been waived by him, he shall, prior to any charge being made against his pay, be afforded the opportunity to inspect the record of proceedings or a copy thereof. He shall, in such case, submit a signed statement in regard thereto or to the effect that he does not desire to make such a statement. If, by reason of unauthorized absence of other factors, the rights of a party cannot be afforded to an alleged offender, a full and complete report of the reasons therefor shall be included in the record of proceedings. If, at the time of the convening of an Article 139 investigation, the identity of an offender is unknown, the investigation shall proceed with the subject matter of the inquiry. However, as soon as the identity of the offender becomes known, such person shall be called before the investigation (unless such action is impractical by reason of unauthorized absence or other factors), designated as a party to the investigation, and accorded his rights as such. Such proceedings and any waiver on the part of the offender shall be recorded verbatim. A person in an unauthorized absence or desertion status shall, while in such status, be considered as having waived his rights as a party to the investigation. Upon termination of the unauthorized absence or desertion, such person shall, if practicable, be accorded the rights of a party as to any portion of the investigation which has not then been completed.

(e) *Measure of damages.* The inquiry or investigation is to be guided by the general claims regulations (Part 750 of this subchapter) in determining the

measure of damages as a basis for recommending assessment.

(f) *Findings.* The investigation shall make findings of fact as to the necessary elements set forth in these regulations pertaining to the validity of the claim under consideration and shall state its findings of fact and opinions as appropriate, as to the person or persons responsible for the damage concerning which the claim is filed. Using the appropriate measure of damages, it shall determine the amount of damage incurred by the property owner.

(g) *Recommendations.* The fact-finding body shall make recommendations as to the amount to be assessed and charged against the pay of the responsible party or parties. If more than one person is found to be responsible, recommendations shall be made as to the amount to be assessed against each offender.

(h) *Consolidation of investigations.* A formal investigation conducted under Article 139, UCMJ may be combined with an investigation required for any other reason.

[35 FR 13109, Aug. 18, 1970, as amended at 41 FR 26866, June 30, 1976]

§ 755.7 Action to be taken by commanding officer and higher authority where offenders are members of one command.

(a) *Action by commanding officer.* When all of the offenders are members of the command of the officer who has ordered the investigation, such officer shall determine, in taking action on the record of such investigation, whether the claim is within the provisions of Article 139, UCMJ and the regulations in this part. If he finds that the claim is within such provisions, he shall fix the amount to be assessed against the offender or offenders. Subject to the limitations of § 755.4, charges totaling the amount of damages assessed and approved shall be made in such proportion as may be deemed just upon the pay of those shown to have been principals or accessories.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no additional review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial jurisdiction, the original of the investigation, with the commanding officer's action thereon approving or disapproving the claim, shall be forwarded to the officer exercising general court-martial jurisdiction over the command. A copy of the report will be filed at the command concerned. Upon receipt by the officer exercising general court-martial jurisdiction, the report, as approved or disapproved, will be reviewed. Such reviewing authority shall place his action on the record and return the record to the commanding officer who, after noting his order or other actions thereon, shall forward it to the Judge Advocate General via any other appropriate commands. The final action of a commanding officer either directing a charge against the pay of an offender or denying the claim, shall be consistent with the reviewing authority's action. The claimant and offender or offenders shall be informed of such final order. Any determination that the claim is invalid or that no members of the command were pecuniarily responsible shall be communicated promptly to the claimant.

(c) *Charge against pay.* The amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offender and the amounts so collected will be paid to the claimant. The amount charged in any single month against the pay of an offender under Article 139, UCMJ shall not exceed one-half of the basic pay of the offender. The basic pay of an offender shall be as defined in paragraph 126h(2), Manual for Courts-Martial. The action by the commanding officer in ordering the assessment against the pay of an offender shall be conclusive on any disbursing officer for payment by him to the claimant of the damages assessed, approved, charged, and collected.

§ 755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.

(a) *Action by common superior.* Where the offenders are members of

different commands the investigation or investigations conducted under Article 139, UCMJ shall be forwarded, if practicable, to the common superior who exercises general court-martial jurisdiction. In such circumstances, a commanding officer who ordered an investigation shall not make charges against the pay of an offender, but shall make recommendations in this regard. If an alleged offender was neither accorded the rights of a party nor subsequently afforded the right to inspect the investigative report and make a statement thereon, a copy of the report shall be forwarded to such offender for his inspection and his statement. This statement may set forth the member's version of the incident or it may merely reflect the fact that he does not desire to avail himself of the opportunity. The statement shall be forwarded to the superior exercising general court-martial jurisdiction who is to adjudicate the claim. The common superior commander shall fix the amount, if any, to be assessed against the offender or offenders and direct the appropriate commanding officers to take action accordingly. See § 755.7 (b) and (c). The common superior shall forward the record, with his action and all statements appended, to the Judge Advocate General via appropriate commands.

(b) *Forwarding to SECNAV(JAG).* Where it is not practicable or possible to carry out the procedure prescribed in paragraph (a) of this section, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of an offender until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.9 Reconsideration.

In the absence of newly discovered evidence, an adjudication pursuant to the regulations in this part shall be final except as to the Secretary of the Navy (Judge Advocate General). In the event of newly discovered evidence deemed sufficient to warrant reopening the matter, further investigation shall be conducted by the commanding officer and forwarded with recommendations to the Judge Advocate General.

§ 755.10 Effect of court-martial proceedings.

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender; consequently, a person may be tried and punished for violation of the UCMJ without regard to proceedings under these regulations. The two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other; the court-martial is of a criminal nature and the assessment of damage is of a civil nature. Acquittal or conviction of the alleged offender by court-martial is evidence but is without independent controlling effect upon the proceedings under Article 139, UCMJ, or approval or denial of a claim thereunder.

[36 FR 14740, Aug. 11, 1971]

PART 756—NONAPPROPRIATED FUND CLAIMS REGULATIONS

Sec.

756.1 General.
756.2 Notification.
756.3 Processing claims.
756.4 Payment of claims.
756.5 Claims by employees.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

SOURCE: 38 FR 6052, Mar. 6, 1973, unless otherwise noted.

§ 756.1 General.

(a) Non-appropriated-fund activities are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Navy Department and if the degree of control and supervision by the Navy Department is more than casual or perfunctory. Compare United States v. Holcombe, 277 F. 2d 143 (4th Cir. 1960) and Scott v. United States, 226 F. Supp. 846, (D. Ga. 1963). To the extent that sovereign immuni-

ty is waived by the Federal Tort Claims Act, therefore, the United States remains ultimately liable for payment of non-appropriated-fund-activity claims. It is policy to pay these claims from non-appropriated funds and to process them primarily through non-appropriated-fund-activity claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated-fund-activity claims.

(b) Claims arising out of the operation of non-appropriated-fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated-fund activities. All claims should be submitted to the command having cognizance over the non-appropriated-fund activity involved.

§ 756.2 Notification.

Many non-appropriated-fund activites carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Naval Supply Systems Command determine whether non-appropriated-fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of non-appropriated-fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability.

§ 756.3 Processing claims.

(a) *Responsibility for processing.* The primary responsibility for the negotiation and settlement of claims resulting from non-appropriated-fund activities is normally with the non-appropriated-fund activity and its insurer. The standard procedures described in Part 750 of this chapter for investigating and processing claims must, however, be followed in order to protect the residual liability of the United States.

(b) *Negotiations.* (1) When a non-appropriated-fund activity is insured, the insurer will normally conduct negotiations with claimants. The appropriate Naval adjudicating authority has the responsibility of monitoring the negotiations conducted by the insurer. Such monitoring shall be limited to ascertaining that someone has been assigned to negotiate, to obtaining periodic status reports, and to closing out files on settled claims. Any dissatisfaction with the insurer's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action.

(2) When there is no private insurer and the non-appropriated-fund activity has made no independent arrangements for negotiations, the appropriate Navy adjudicating authority is responsible for conducting negotiations. Under special circumstances, even when there is an insurer, the appropriate Naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the non-appropriated-fund activity, or its insurer, for payment from non-appropriated funds.

(3) In cases where payment may be authorized under some statute, such as the Foreign Claims Act, but where there is no negligence and neither the non-appropriated-fund activity not its insured is legally responsible, the claim may be considered for payment from appropriated funds or may be referred to the Judge Advocate General for appropriate action.

(c) *Denial.* Claims resulting from non-appropriated-fund activities may be denied only by the appropriate Naval adjudicating authority, since such a denial is required to begin the 6-month limitation on filing suit under the Federal Tort Claims Act. Claims which have initially been processed and negotiated by a non-appropriated-fund activity or its insurer should not be denied until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court. Claimants shall be notified of a denial in accordance with § 750.7 of this chapter.

§ 756.4 Payment of claims.

(a) *Small claims.* Any claim not covered by insurance (or if covered by insurance and not paid by the insurer) which can be settled for $100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim will be paid out of funds available to the commanding officer.

(b) *Other claims.* Claims in excess of $100, for which private insurance is not available and which have been negotiated by the Navy, shall be forwarded to the appropriate headquarters command for payment from nonappropriated funds. Private insurance is usually not available to cover losses which result from some act or omission of a mere participant in a non-appropriated-fund activity. In the event the non-appropriated-fund activity declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

§ 756.5 Claims by employees.

(a) *Property.* Claims by employees of non-appropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with Part 751 of this chapter and forwarded to the appropriate non-appropriated-fund activity for payment from nonappropriated funds.

(b) *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or of foreign nationals employed within the United States.* The compensation provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901-950) was extended to provide for employees of non-appropriated-fund activities who suffered injury or death arising out of and in the course of their employment (5 U.S.C. 8171). If there is a substantial possibility that an employee's injury or death is covered by the Longshoremen's and Harbor Workers' Compensation Act, a claim should first be made under that Act since it is the exclusive basis for Government liability for injuries or deaths which are covered (5 U.S.C. 8173).

(c) *Personal injury or death of foreign nationals employed outside of the Continental United States.* Employees who are not citizens or permanent residents, and who are employed outside of the Continental United States, are protected by private insurance of the non-appropriated-fund activity or by other arrangements (5 U.S.C. 8172). When a non-appropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter will be processed as a foreign claim, or a Federal Tort Claims Act claim if appropriate, and any award will be paid from nonappropriated funds.

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Subpart A—Medical Care Claims

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Subpart C—Joint Regulations on Claims Collection

Sec.
757.21 Joint regulations of the General Accounting Office and Department of Justice on Federal claims collection standards.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 952; 42 U.S.C. 2651-53; 32 CFR 700.206 and 700.1202, unless otherwise noted.

SOURCE: 38 FR 6053, Mar. 6, 1973, unless otherwise noted.

Subpart A—Medical Care Claims

§ 757.1 Definitions.

For the purposes of this subpart:

(a) *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

(b) *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Claims);

(2) The Commandants of all naval districts not served by naval legal service offices, and their district judge advocates;

(3) The Officers in Charge of all naval legal service offices, except naval legal service offices in countries where another service has single service responsibility.

(4) The Officers in Charge of U.S. Sending State Offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

(c) *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.,* where the tort-feasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

(d) *The Act.* "The Act" means the Medical Care Recovery Act (42 U.S.C. 2651-53).

(e) *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

(f) *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claims.

[41 FR 26866, June 30, 1976]

§ 757.2 Authority of the Judge Advocate General and JAG designees.

(a) *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (i.e., a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer-in-charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These

investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

(b) *Authority of JAG and certain JAG designees.* (1) The Judge Advocate General or any cognizant JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) Any cognizant JAG designee, after considering the factors set forth in § 757.5, may compromise or waive any claim not in excess of $20,000 and issued a release thereof.

(c) *Claims exceeding $20,000.* Claims in excess of $20,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

(d) *Potential Value of Claims.* When settlement, compromise or waiver is imminent and the final NAVJAG 5890/12 has not been filed, JAG designees are authorized to estimate the potential value of the claim and to take appropriate action if the potential value comes within their settlement authority.

(e) *Recomputation of Claims.* JAG designees are authorized to recompute the amount of claims reported on form NAVJAG 5890/12 in accordance with the standards of "Tolliver v. Shumate," 151 W. Va. 105, 150 S.E. 2d 579 (1966), and "United States v. Jones," 264 F. Supp. 11 (1967). The information contained on form NAVJAG 5890/13, the particular practices of the hospital involved and the known facts of the case will be considered. Hospitalization periods may be subtracted from the claim when such hospitalization was unnecessary, (such as where a patient was given leave, liberty, or was awaiting assignment to new duties) or may be charged at the reduced rate of an outpatient visit for each day of hospitalization where medical treatment was actually rendered, but hospitalization in a civilian hospital would have been unnecessary or inappropriate. If, upon recomputation, the claim is within the authority of the JAG designee making such recomputation, the claim may be acted upon by that JAG designee.

(f) *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice, (2) a suit has been instituted against the United States by the third party, or (3) a suit has been instituted against the individual who received or is receiving the medical care described above, and for whose negligence the United States may be held liable.

(g) *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. Attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

[41 FR 26867, June 30, 1976]

§ 757.3 Report of care and treatment.

(a) *NAVJAG Form 5890/12.* NAVJAG Form 5890/12 (*see* Appendix section A-24-d)[1] shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.,* in all automobile accident cases).

(b) *Computations.* NAVJAG Form 5890/12 shall be computed by using the rates set out in Appendix A-24-c.[1] All computations by medical personnel and any necessary recomputations will be made pursuant to § 757.2(g).

(c) *Submission of NAVJAG Form 5890/12.* The NAVJAG Form 5890/12 shall be submitted to the action JAG designee at the following times:

(1) An "initial" submission of NAVJAG Form 5890/12 shall be made as soon as practicable after the patient is admitted if it appears that inpatient

[1] Filed as part of original document.

care will last three or more days, or that more than 10 outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of NAVJAG Form 5890/12 shall be made every 4 months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital. The hospital to which the patient is transferred should be noted on the form.

(d) *Supplementary documents.* A narrative summary (Standard Form 502) should accompany the final NAVJAG Form 5890/12 in all cases involving in-patient care. In addition, when Government care exceeds $1,000, the hospital should also provide a completed NAVJAG Form 5890/13 (*see* Appendix A-24-f).[1] On this form, the determination of "patient status" may be based on local hospital usage. If the hospital prefers, it may furnish in lieu of NAVJAG Form 5890/13 a statement by the treating physician (normally on a locally-prepared form) giving the date that necessary inpatient treatment was essentially completed, and the number of outpatient treatments that would have been required if the patient had been discharged on that date. Report control symbol JAG 5890-10 is assigned to this report.

(e) *Information for health record and for action JAG designees.* Copies of all NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

[1] Filed as part of original document.

(f) *Treatment of nonnaval personnel.* Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) *U.S. Army:* Commanding general of the Army or comparable area commander in which the incident occurred;

(2) *U.S. Air Force:* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) *U.S. Coast Guard:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred;

(4) *Department of Labor:* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) *Veterans' Administration:* Director of the Veterans' Administration Hospital responsible for medical care of the injured party;

(6) *Department of Health, Education, and Welfare:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

(g) *Treatment of naval personnel by other Federal agencies.* Where medical care is provided to naval or Marine Corps servicemen, retirees, or their dependents by another Federal department or agency, the Department of the Navy generally will assert any claim on behalf of the United States. Appropriate forms should be forwarded to the action JAG designees.

(h) *Civilian medical care.* The district medical officers and the district dental officers are responsible for paying emergency civilian medical expenses incurred by active-duty servicemen. Such officers should furnish evidence of payment to the action JAG designee (1) when a third party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-

payments insurance (e.g., in all automobile accident cases).

(i) *CHAMPUS cases.* CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colo. 80240, to forward reports of payments in injury cases directly to the action JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

(31 U.S.C. 952 and 42 U.S.C. 9651-53)

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22262, June 21, 1974; 41 FR 26867, June 30, 1976]

§ 757.4 Investigations.

(a) *When required.* Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual under circumstances which may give rise to a medical care claim, an investigation shall be conducted in the manner and form prescribed in Part 750 of this chapter. However, no investigation is required for the purposes of this chapter if the medical care furnished does not exceed 3 inpatient days or 10 outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See § 757.3(f) for addresses of other departments and agencies.

(b) *Consolidation.* Separate investigations are not required for the purposes of this chapter in cases where there has been an investigation for other purposes which can be used as a basis for determining liability. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent CHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

(c) *Information for action JAG designee.* All investigations, regardless of origin, involving a possible medical care claim, shall be routed via, or a copy forwarded to, the action JAG designee.

§ 757.5 Determination, assertion, and collection of claims.

(a) *Determination and notice of claim.* Action JAG designees, regardless of the amount of the claim, shall determine liability in accordance with the law of the state or country in which the incident occurs. If the JAG designee determines that a third party is liable, he shall forward a "Notice of Claim" (Standard Form 96) to the third party. If he determines that an insurance company or workmen's compensation carrier is liable, he shall forward the company an appropriate notice of the Government's claim. If he determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

(b) *Foreign claims.* Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof shall be made as provided in this chapter unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(c) *Advice for injured party.* In cases where an action JAG designee determines that third-party liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (i) Furnish the action JAG designee any pertinent information concerning the incident; (ii) notify the action JAG designee of any settlement offer from the third party or his insurer; and (iii) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

(d) *Pursuit of claims.* (1) Action JAG designees shall, if possible, and if not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by § 757.2(b). Before action is taken on a file, the action JAG designee shall determine:

(i) Whether the injured party has retained or intends to retain counsel;

(ii) Whether the tortfeasor denies liability and/or refuses to pay;

(iii) In cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and

(iv) Whether consideration has been given to asserting a claim under available uninsured-motorist or medical-payments coverages.

(e) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the Government's claim as an item of special damages in their client's claim or suit. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees neither may be paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery.

(3) If the injured party, or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(f) *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in paragraphs (a) and (b) of this section, and shall forward the file to the Judge Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases where the third party is uninsured, a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by

the insurer in accordance with a state requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to ensure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States—*i.e.*, whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

(g) *Waiver and compromise requests.* In cases in which a compromise or a complete waiver of the Government's claim is requested, and the claim is beyond the settlement authority of the action JAG designee, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by paragraph (e) of this section, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out of pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(6) Any other information indicating that full collection of the Government's claim would work an undue hardship upon the injured party.

(h) *Payments.* Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

(31 U.S.C. 952 and 42 U.S.C. 9651-53)

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22262, June 21, 1974; 41 FR 26867, June 30, 1976]

§ 757.6 Medical records.

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, subject to the limitations contained in chapter 23, Manual of the Medical Department. See Part 720 of this chapter concerning certifications where necessary for litigation.

§ 757.7 Notice of claim.

The "Notice of Claim" (Standard Form 96) shall be used when a claim under the Act is asserted against a third-party tort feasor. Substitute forms are not authorized. Locally-prepared forms are authorized, however, for claims not based upon third-party liability.

§ 757.8 Statistical reports.

Action JAG designees shall forward monthly reports to the Judge Advocate General setting forth the following information:

(a) The number of claims asserted during the month;

(b) The number of recoveries made during the month (in cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);

(c) The dollar amount of claims asserted during the month;

(d) The dollar amount of recoveries made during the month (including partial recoveries); and

(e) The total number of active claims on file at the end of the month.

Report Symbol JAG-5800-11 is assigned for this reporting requirement.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22263, June 21, 1974; 45 FR 8600, Feb. 8, 1980]

§ 757.9 Geographical limitations—single-service responsibility.

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See § 750.24 of this chapter for single-service responsibility.

§ 757.10 Rates for medical care provided in Federal hospitals.

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in appendix section A-24(c). [1]

§ 757.11 Single demand for medical care and property damage claims.

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

§ 757.12 Statute of limitations.

Pursuant to the provisions of 28 U.S.C. 2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statute.

§ 757.13 Reference material.

The following aids and reference materials are contained in appendix section A-24:

(a) A-24-a. [1] Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act,

(b) A-24-b. [1] Department of Justice Order Number 289-62 (as amended), pursuant to Executive Order 11060;

(c) A-24-c. [1] Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

(d) A-24-d. [1] NAVJAG Form 5890/12, "Hospital and Medical Care 3rd Party Liability Case,"

(e) A-24-e. [1] Standard Form 96, "Notice of Claim,"

(f) A-24-f. [1] NAVJAG Form 5890/13, "Supplemental Statement for Hospital and Medical Care Third Party Liability Case."

(g) A-24-g. [1] Department of the Navy Promissory Note.

(h) A-24-h. [1] Sample report on property damage claims.

[39 FR 22263, June 21, 1974]

[1] Filed as a part of original document.

Subpart B—Property Damage Claims

§ 757.14 Regulations concerning affirmative claims.

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (Subpart C of this Part). Department of Defense Directive 5515.11 of 10 December 1966 delegates to the Secretary of the Navy, and his designees, the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

(31 U.S.C. 952 and 42 U.S.C. 9651-9653)

[39 FR 22263, June 21, 1974; as amended at 41 FR 26867, June 30, 1976]

§ 757.15 Pursuit, settlement, and termination of claims.

(a) *Authority to handle claims.* Subject to paragraph (b) of this section, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States.

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims); the Director, Litigation and Claims Division;

(2) The commandant or the district judge advocate of a naval district;

(3) The officer in command or the director of a Navy law center; and

(4) Overseas commands with a Navy or Marine Corps judge advocate attached.

(b) *Claims over $20,000.* Claims in excess of $20,000 may not be compromised or terminated without the permission of the Department of Justice. The officers designated by paragraph (a) of this section should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Subpart C of this part).

(c) *Release.* The officers designated by paragraph (a) of this section are authorized to execute a release on behalf of the United States (1) when full payment is received, (2) when a claim is under $20,000, or (3) when permission to compromise has been granted by the Department of Justice.

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22263, June 21, 1974; 41 FR 26867, June 30, 1976]

§ 757.16 Collection of claims.

(a) *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelfth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

(b) *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. *See* Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

(c) *Rental automobile deductible damage claims.* When a rental automobile is damaged while in the possession of service personnel or Government employees on official business and a part of the damages are paid or reimbursed by the Government in accordance with Joint Travel Regulations (Volume 1, paragraph M4405-1 and Volume 2, paragraph C6101-3), officers authorized to take collection action under this part shall endeavor to collect the amount of the Government's loss from any third-parties

liable in tort. Collection action should not be directed at the personnel who rented the damaged vehicles. Collection efforts may be discontinued or claims compromised in accordance with the guidelines of Subpart C of this part.

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22263, June 21, 1974]

§ 757.17 Repair of Government property by the tort-feasor.

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer-in-charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer-in-charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigate report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer-in-charge that the property has been satisfactorily repaired, and that all bills for repairs have been paid.

§ 757.18 Referral of cases to the Department of Justice or GAO.

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General Accounting Office. Before recommending such action, the command handling the claim should assure that full collection efforts (as required by Subpart C of this part) have been completed.

§ 757.19 Statute of limitations.

There is a 3-year statute of limitation on affirmative Government claims "founded upon a tort." 28 U.S.C. 2415(b). Uncollected affirmative claims should therefore be forwarded to the Judge Advocate General soon enough for timely referral to the Department of Justice. Any installment-payment agreement that will run beyond the statutory period should include a confess-judgment clause (*see* appendix section A-24-g).[1]

[39 FR 22263, June 21, 1974]

§ 757.20 Reports.

(a) The officers designated by § 757.15 (a)(2)-(4) shall make a quarterly report on property damage claims to the Judge Advocate General. The report should include the following figures:

(a) Number of claims asserted;
(b) Dollar amount of claims asserted;
(c) Number of claims collected;
(d) Dollar amount of claims collected.

Report control JAG 5890-3 is assigned to this report.

[39 FR 22263, June 21, 1974]

Subpart C—Joint Regulations on Claims Collection

§ 757.21 Joint regulations of the General Accounting Office and the Department of Justice on Federal claims collection standards.

Joint regulations of the General Accounting Office and the Department of Justice on Federal Claims Collection standards are found in 4 CFR Part 101 et seq.

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[1] Filed as part of original document.

SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Subpart A—Introduction

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761.2 Background and general policy.
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761.5 Definitions.

Subpart B—Criteria and Basic Controls

761.6 Criteria.
761.7 Basic controls.

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761.8 General.
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761.10 Persons; group authorizations.
761.11 Persons: Individual authorizations.
761.12 Ships: Group authorizations.
761.13 Ships: Individual authorizations.
761.14 Aircraft: Group authorizations.
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761.17 Revocation.
761.18 Appeals.
761.19 Forms.

Subpart D—Additional Instructions

761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5031, 6011, 18 U.S.C. 2152. The text of Part 761 contains additional references, including Executive Orders.

SOURCE: 28 FR 13778, Dec. 18, 1963, unless otherwise noted.

Subpart A—Introduction

§ 761.1 Scope.

(a) This part provides regulations governing the entry of persons, ships, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President (see § 761.3(a)).

(2) Areas placed under the Secretary of the Navy for administrative purposes by Executive order of the President (see § 761.3(b)).

(3) The Trust Territory of the Pacific Islands (see § 761.3(c)).

(b) The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.2 Background and general policy.

(a) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this part, and military installations contiguous to or within the boundaries of defense areas, is subject to control as provided for by Executive order or other regulation. The object of controls over entry into naval defensive sea areas, naval airspace reservations, administrative areas, and the Trust Territory of the Pacific Islands, is to provide for the protection of military installations as well as other facilities, including the personnel, property, and equipment assigned to or located therein. Persons, ships, and aircraft are excluded unless and until they qualify for admission under the applicable Executive order or regulation.

(b) The control of entry into or movement within defense areas by persons, ships, or aircraft will be exercised so as to fully protect the physical security of, and insure the full effectiveness of, bases, stations, facilities and other installations within or contiguous to defense areas. However, unnecessary interference with the free movement of persons, ships, and aircraft is to be avoided.

(c) This part will be administered so as to provide for the prompt processing of all applications and to insure uniformity of interpretation and application, insofar as changing conditions permit.

(d) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.3 Authority.

(a) *Naval Defensive Sea Areas and Naval Airspace Reservations.* By Executive Orders, as amended, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, ships, and aircraft into the areas so described. (See § 761.4(b) for delineation of areas where entry controls are suspended.)

(1) *Atlantic areas.* Guantanamo Bay Naval Defensive Sea Area; Guantanamo Bay Naval Airspace Reservation: Executive Order 8749 of May 1, 1941 (6 FR 2252; 3 CFR, 1943 Cum. Supp., p. 931).

(2) *Pacific areas.* (i) Honolulu Defensive Sea Area: Executive Order 8987 of December 20, 1941 (6 FR 6675; 3 CFR, 1943 Cum. Supp., p. 1048).

(ii) Kaneohe Bay Naval Defensive Sea Area; Kaneohe Bay Naval Airspace Reservation: Executive Order 8681 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 893).

(iii) Pearl Harbor Defensive Sea Area: Executive Order 8143 of May 26, 1939 (4 FR 2179; 3 CFR, 1943 Cum. Supp., p. 504).

(iv) Johnston Island Naval Defensive Sea Area; Johnston Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(v) Kingman Reef Naval Defensive Sea Area; Kingman Reef Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vi) Midway Island Naval Defensive Sea Area; Midway Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vii) Wake Island Naval Defensive Sea Area; Wake Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1917 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(viii) Kiska Island Naval Defensive Sea Area; Kiska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(ix) Kodiak Naval Defensive Sea Area: Executive Order 8717 of March 22, 1941 (6 FR 1621; 3 CFR, 1943 Cum. Supp., p. 915). Kodiak Naval Airspace Reservation: Executive Order 8597 of November 18, 1940 (5 FR 4559; 3 CFR, 1943 Cum. Supp., p. 837) as amended by Executive Order 9720 of May 8, 1946 (11 FR 5105; 3 CFR, 1943-1948 Comp., p. 527).

(x) Unalaska Island Naval Defensive Sea Area, Unalaska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919). See § 761.4(d) for delineation of areas where entry controls are suspended.

(b) *Administrative areas.* By Executive orders, as amended, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named

areas including their appurtenant reefs and territorial waters:

(1) Johnston Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(2) Kingman Reef—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(3) Midway Island—Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(4) Sand Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(c) *Trust Territory of the Pacific Islands.* The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. Under Executive Order 11021 of May 7, 1962 (27 FR 4409; 3 CFR, 1959-1963 Comp., p. 600), the Secretary of the Interior is charged with responsibility for administration of the civil government of the Trust Territory of the Pacific Islands. Under July 1, 1963 amendment two agreements effective July 1, 1951 and July 1, 1962 between the Department of the Navy and the Department of the Interior concerning responsibility for administration of the Government of the Trust Territory, the entry of individuals, ships and aircraft into the Trust Territory (other than areas under the control of the Department of the Army (Kwajalein Atoll) and of the Defense Nuclear Agency (Eniwetok Atoll) see § 761.4) is controlled by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

(1) Entry of U.S. citizens and nationals and citizens of the Trust Territory, into areas of the Trust Territory other than those areas under control of the Department of the Army and the Defense Nuclear Agency as outlined above, shall be controlled by the High Commissioner.

(2) All other persons: Applications for entry into the Trust Territory except for those areas under control of the Department of the Army or of the Defense Nuclear Agency, of all persons who are not U.S. citizens, U.S. nationals, or who are not citizens of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided,* That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases (with the exception of alien individuals who possess a valid U.S. visa and seek admission to the Trust Territory for a period of 30 days or less for the purpose of tourism) information on the applicants for its consideration and comment, granting thereby the Department of the Navy the right to object to the issuance of an authorization.

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory into areas of the Trust Territory, excepting those areas where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

(ii) Applications for entry into the Trust Territory, except for those areas under military control, of ships and aircraft not documented under the laws of the United States or the laws of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided,* That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases with information on the applicants for its consideration and comment, granting thereby the right of the Department of the Navy to object to the issuance of an authorization.

(d) [Reserved]

(e) *Exercise of authority.* The authority of the Secretary of the Navy to control entry of ships, planes, and persons into the areas listed is exercised through the Chief of Naval Op-

erations and certain of his subordinates as prescribed in this part.

(f) *Penalties.* Penalties are provided by law: (1) For violations of orders or regulations governing persons or ships within the limits of defensive sea areas (62 Stat. 799; 18 U.S.C. 2152); (2) for entering military, naval or Coast Guard property for prohibited purposes or after removal or exclusion therefrom by proper authority (62 Stat. 765; 18 U.S.C. 1382); (3) for violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any department or agency of which said department or agency consists, or any officer of employee of said department or agency (sec. 21 of the Internal Security Act of 1950 (50 U.S.C. 797) and Department of Defense Directive 5200.8 of 20 August 1954 (19 FR 5446)); and (4) for knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. 1001).

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970; 36 FR 21889, Nov. 17, 1971; 41 FR 28957, July 14, 1976]

§ 761.4 Special provisions.

(a) Entry into islands in the Kwajalein Atoll under military jurisdiction is controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army Safeguard System Command, ATTN: SSC-R, P.O. Box 1500, Huntsville, AL 35807.

(b) Entry into Eniwetok Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115.

(c) Entry into Johnston Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Johnston Atoll should be directed to: Commander, Johnston Atoll (FCDNA), APO San Francisco, CA 96305.

(d) *Suspension of restrictions.* Restrictions imposed under the authority of the above cited Executive Orders on entry into the following Naval Defensive Sea Areas and Naval Airspace Reservations and Administrative Areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require.

(1) All Naval Airspace Reservations, except the Guantanamo Bay Naval Airspace Reservation

(2) Honolulu Defensive Sea Area.

(3) Kiska Island Naval Defensive Sea Area.

(4) Kodiak Island Naval Defensive Sea Area.

(5) Unalaska Island Naval Defensive Sea Area.

(6) Wake Island Naval Defensive Sea Area except for entry of foreign flag ships and foreign nationals.

(7) The portion of Kaneohe Defensive Sea Area lying beyond a 500 yard buffer zone around the perimeter of the Kaneohe Marine Corps Air Station (Mokapu Peninsula) and eastward therefrom to Kapoho Point, Oahu.

(e) Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area, or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

[41 FR 28957, July 14, 1976]

§ 761.5 Definitions.

(a) *Defense area.* A naval defensive sea area, naval airspace reservation, or naval administrative area established by Executive order of the President.

(b) *Department of Defense.* The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) *Entry authorization.* A document which authorizes a ship, aircraft, or person to enter a defense area.

(d) *Entry Control Commander.* A commander empowered to issue entry authorizations for one or more defense areas (see § 761.9).

(e) *Excluded person.* A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for him to enter any defense area has been denied, suspended or revoked.

(f) *Foreign nationals.* Persons who are not citizens or nationals of the United States.

(g) *Military installation.* A military (Army, Navy, Air Force, Marine Corps, and/or Coast Guard) activity ashore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to military control and to the immediate authority of a commanding officer.

(h) *Public vessel or aircraft.* A ship or aircraft owned by or belonging to a government and not engaged in commercial activity.

(i) *Territorial sea*—(1) *Trust Territory.* In accordance with Title 19, section 101(3), of the Trust Territory Code "* * * that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such reef system, the distance to be measured from the low water line of any island, islet, atoll, reef, or rocks within the jurisdiction of the Trust Territory."

(2) *Other areas.* That part of the sea included within the envelope of all arcs of circles having a radius of three marine miles with centers on the low water line of the coast. For the purpose of this definition, the term "coast" includes the coasts of islands, islets, rocks, atolls, reefs and other areas of land permanently above the high water mark.

(j) *Trust Territory Registry.* Registration of a ship or aircraft in accordance with the laws of the Trust Territory.

(k) *U.S. Registry.* Registration of a ship or aircraft in accordance with the laws and regulations of the United States.

(l) *U.S. Armed Forces.* Military personnel of the Department of Defense, the Departments of the Army, Navy, Air Force, and the United States Coast Guard.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10009, June 18, 1970; 41 FR 28958, July 14, 1976]

Subpart B—Criteria and Basic Controls

§ 761.6 Criteria.

(a) *General.* (1) Entry authorizations may be issued only after an Entry Control Commander, or a duly authorized subordinate acting in his behalf, has determined that the presence of the person, ship, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability, or effectiveness of any military installation located within or contiguous to a defense area. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the personal history, character and present or past associates of the individuals involved, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft or the individual or individuals involved impose or might reasonably be expected to impose on the related base complex.

(2) Requests for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimical to the purposes of national defense.

(b) *Adverse.* Substantial evidence of any of the following shall preclude the granting of entry authorization except with the specific approval of the Chief of Naval Operations in each case:

(1) Prior noncompliance with entry control regulations or failure to observe terms under which any entry authorization may have been granted; [1]

[1] The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

(2) Willfully furnishing false, incomplete, or misleading information in an application for an entry authorization;[1]

(3) Advocacy of the overthrow or alteration of the Government of the United States by unconstitutional means;

(4) Commission of, or attempt or preparation to commit, an act of espionage, sabotage, sedition, or treason, or conspiring with or aiding or abetting another to commit such an act;

(5) Performing, or attempting to perform, duties, or otherwise acting so as to serve the interest of another government to the detriment of the United States;

(6) Deliberate unauthorized disclosure of classified defense information;

(7) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which uniawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means;

(8) Serious mental irresponsibility evidenced by having been adjudged insane, or mentally irresponsible, or an incompetent, or a chronic alcoholic, or treated for serious mental or neurological disorders or for chronic alcoholism, without evidence of cure;[1]

(9) Conviction of any of the following offenses under circumstances indicative of a criminal tendency potentially dangerous to the security of a strategic area containing military establishments; arson, unlawful trafficking in drugs, murder, kidnaping, blackmail, or sex offenses involving minors or perversion.

(10) Chronic alcoholism or addiction to the use of narcotic drugs without adequate evidence of rehabilitation;[1]

(11) Illegal presence in the United States, its territories or possessions, having been finally subject to deportation order, or voluntary departure in lieu of deportation order, by the United States Immigration and Naturalization Service;[1]

(12) Being the subject of proceedings for deportation or voluntary departure in lieu of deportation for any reasons which have not been determined in the applicant's favor;[1]

(13) Conviction of larceny of property of the United States, willful injury to or destruction of property of the United States, fraudulent enlistment, impersonation of a commissioned officer of the United States or any state or territory thereof, or any offense involving moral turpitude, except offenses, which, in the jurisdiction within which the conviction was obtained, are punishable by imprisonment for not more than one year or a fine of not more than one thousand dollars.[1]

(c) *Aliens.* (1) Entry of aliens for employment or residence in an area entirely within the borders of a defense area is not authorized except when such entry would serve the interests of National Defense, and then only for specified periods and under prescribed conditions.

(2) Entry of aliens for any purpose into areas over which the United States exercises sovereignty is further subject to requirements imposed by law for the obtaining of a United States visa. Naval authorization for entry into areas covered by this part will not be issued to foreign nationals for purposes, places, or periods of time in excess of those stipulated in the visa.

(3) Alien spouses and bona fide dependents of U.S. citizen employees of the United States may, if otherwise qualified, be granted entry authorization so long as the U.S. citizen sponsor or principal remains on duty or resident within the defense area.

(d) *Renewals.* Entry authorizations having been granted and utilized may be extended or renewed upon request at the expiration of the period for which the entry was originally authorized or extended, provided the justification for remaining in the area or for making a reentry meets the criteria

[1] The criteria so marked are applicable only to those applications concernig entry into areas under military cognizance.

set forth in this part. It shall be the responsibility of every applicant to depart the defense area for which entry was authorized upon expiration of the time prescribed in the authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence of violation of this part and may result in denial of future authorizations.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

§ 761.7 Basic controls.

(a) *General.* Except for such persons, ship, or aircraft as are issued an authorization to enter by an Entry Control Commander:

(1) No person, except persons aboard public vessels or aircraft of the United States, shall enter any defense area.

(2) No vessel or other craft, except public vessels of the United States shall enter any naval defensive sea area or other defense area.

(3) No aircraft, except public aircraft of the United States, shall be navigated within any naval airspace reservation of the airspace over other defense areas.

(b) *Excluded persons*—(1) *Entry prohibited.* Excluded persons, as defined in § 761.5(e), are prohibited from entering any defense area. In a bona fide emergency which requires an excluded person's presence in or transit through a military installation which is also a defense area, the commanding officer of the installation may grant permission to enter or transit subject to such restrictions as may be imposed by regulation or which may, in his discretion, be required.

(2) *Carrying prohibited.* Except in a bona fide emergency and after being authorized by the appropriate local authority, no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person, as defined in this part, as passenger, officer or crew member.

(c) *Control of violators.* No commanding officer of a military installation shall permit any ship or aircraft which has entered the limits of his command by passing through a defense area without authorization to land, except in emergency, or, if permitted to land, to disembark passengers or cargo except as authorized by the appropriate Entry Control Commander. Commanding officers will take appropriate action to apprehend violators who come within their jurisdiction and request disposition instructions from the appropriate Entry Control Commander.

(d) *Trust Territory.* An authorization from the High Commissioner is required for all persons desiring to enter the Trust Territory, except for those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll).

(e) *Military areas.* Entries authorized under this Instruction do not affect the authority of a commanding officer or other appropriate commander to impose and enforce proper regulations pertaining to movement into or within naval stations or other military installations.

(f) *Waiver prohibited.* No officer of the U.S. Armed Forces, except as authorized in writing by the Chief of Naval Operations, has authority to waive the requirements of this part, and any waiver must be in writing and signed by an authorized person.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

Subpart C—Entry Authorization

§ 761.8 General.

(a) As indicated in § 761.7(a), certain persons, ships, and aircraft must be specifically authorized under the provisions of this part to enter defense areas.

(b) When entering or transiting a defense area each person, ship, or aircraft must have a valid authorization or satisfactory evidence thereof.

§ 761.9 Entry Control Commanders.

The following commanders are designated Entry Control Commanders with authority to approve or disapprove individual entry authorizations for persons, ships, or aircraft as indicated (Commander Seventeenth Coast Guard District has been designated an

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Entry Control Commander by the authority of the Commandant, U.S. Coast Guard and Commander, Western Area, U.S. Coast Guard);

(a) *Chief of Naval Operations.* Authorization for all persons, ships, or aircraft to enter all defense areas.

(b) *Commander in Chief, U.S. Atlantic Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Atlantic.

(c) *Commander in Chief, U.S. Pacific Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Pacific.

(d) *Commander U.S. Naval Forces Caribbean.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation. (This authority delegated to Commander U.S. Naval Base, Guantanamo Bay.)

(e) *Commander U.S. Naval Base, Guantanamo Bay.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation.

(f) *Commander Third Fleet.* Authorization for U.S. citizens and U.S. registered private vessels to enter Midway Island, Kingman Reef, Kaneohe Bay Naval Defensive Sea Area, Pearl Harbor Defensive Sea Area and Filipino workers employed by U.S. contractors to enter Wake Island.

(g) *Commander U.S. Naval Forces, Marianas.* Authorization in conjunction with the High Commissioner, for non-U.S. citizens, ships, or aircraft documented under laws other than those of the United States or the Trust Territory to enter those portions of the Trust Territory where entry is not controlled by the Department of the Army or the Defense Nuclear Agency.

(h) *Senior naval commander in defense area.* Emergency authorization for persons, ships, or aircraft in cases of emergency or distress. In all cases the Chief of Naval Operations, and as appropriate, the Commander in Chief, U.S. Atlantic Fleet or the Commander in Chief, U.S. Pacific Fleet, and other interested commands, shall be informed immediately of the nature of the emergency, and action taken.

(i) *U.S. Coast Guard.* The U.S. Coast Guard regulates the movement of shipping within the Honolulu Harbor under the authority of Executive Orders 10173 and 10289; such shipping is considered to be under U.S. authorized supervision within the meaning of Executive Order 8987. The Commandant, Fourteenth Naval District, as representative of the Secretary of the Navy, retains responsibility for security of the Honolulu Defensive Sea Area, as required by naval interest, and, as such, issues amplifying instructions relating to the Honolulu Defensive Sea Area.

[41 FR 28958, July 14, 1976]

§ 761.10 Persons; group authorizations.

Persons in the following categories, except those persons who have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) Persons aboard U.S. public vessels or aircraft entering a Naval Defensive Sea Area or a Naval Airspace Reservation.

(b) Military members of the U.S. Armed Forces or U.S. civil service employees of the Department of Defense when traveling on official orders.

(c) U.S. ambassadors, cabinet members, elected U.S. Government officers and U.S. citizen civil service employees of the U.S. Government traveling on official orders on U.S. Government business may enter defense areas as required by their orders.

(d) Dependents of military members of the U.S. Armed Forces and U.S. citizen dependents of U.S. civil service employees traveling on official orders and entering for purposes of joining a principal permanently stationed in an area covered by this part.

(e) U.S. Navy Technicians, U.S. Army Contract Technicians, or U.S. Air Force Contract Technicians, who are traveling on official (does not include invitational) travel orders on U.S. Government business, may enter defense areas as specifically required by such orders.

(f) [Reserved]

(g) Individuals on board any foreign public vessel or aircraft which has been granted diplomatic or other official U.S. Government authorization to enter an area covered by this part.

(h) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic vessels authorized to enter areas covered by this part. This does not include an authorization to disembark at a port contiguous to or within the areas covered in this part. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the particular port.

(i) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic aircraft authorized to enter areas covered by this part. Such persons are subject to local regulations governing entry into or movement within military air stations or facilities. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the air facility.

(j) U.S. citizen news correspondents and photographers when properly accredited by the Department of Defense to enter areas covered by this part except that special authorization is required to enter the restricted areas listed in § 761.4(a).

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.11 Persons: Individual authorizations.

(a) *Application; filing.* Applications for authorization to enter defense areas shall be filed with one of the following:

(1) Chief of Naval Operations.

(2) Commander in Chief, U.S. Atlantic Fleet.

(3) Commander in Chief, U.S. Pacific Fleet.

(4) Any Naval Sea Frontier Commander.

(5) Any Naval Fleet or Force Commander.

(6) Any Naval District Commandant.

(7) Any Naval Attache. The Commander or Attache with whom the application is filed is responsible for taking such action on the application as he may be empowered to do or for forwarding the application to the nearest Entry Control Commander authorized by this part to take action thereon. Applications received in the United States and those received indicating that the applicant has resided in the United States for the major portion of ten years immediately prior to date of request will normally be forwarded to the Chief of Naval Operations for action. In all cases where the forwarding activity has information regarding the applicant or his employer, appropriate comment and/or recommendation for disposition will be included in the forwarding letter.

(b) *Form.* (1) Applications for entry authorizations will be made on the standard form Statement of Personal History, DD 398, which is available at most military installations. In addition to the information required by the form, an entry application shall include the following additional information under Item 20, "Remarks":

"21. Purpose of proposed visit: (Detailed statement including names of principal persons, firms, or establishments to be visited)

"22. Proposed duration of visit:

"23. Estimated date of arrival:

"24. Address to which authorization should be mailed:"

In the event that a DD 398 form is not available, a locally produced form containing identical information including the certification and signature of applicant and witness may be utilized.

(2) Incomplete forms will be returned for completion.

(3) When time is of the essence, emergency applications may be forwarded by message to the appropriate Entry Control Commander. Such messages shall include the following:

(i) Name of applicant.

(ii) Date and place of birth.

(iii) Citizenship.

(iv) Residence for last ten (10) years.

(v) Employers and their addresses for last ten (10) years.

(vi) Results of Local Agency Check, if pertinent.

(vii) Place to be entered and date of entry.

(viii) Purpose of entry and duration of stay.

(ix) Comments and/or recommendations of forwarding officer as appropriate.

(x) A statement that a completed DD 398 or appropriate substitute has been mailed prior to the sending of the message.

(c) *Processing.* The Entry Control Commander empowered to issue entry authorizations shall upon receipt of an application take the following action:

(1) Initiate or conduct such investigation as may be required to establish facts upon which to make a determination that the entry of the applicant at the time and for the purpose indicated is or is not in accordance with the criteria set forth in § 761.6.

(2) Request additional information from the applicant if required, or

(3) Issue an entry authorization as requested or modified as circumstances require, or

(4) Deny the request and advise the applicant of his right to appeal, or,

(5) Forward the application to the next superior in command together with a statement of the investigation conducted and the reason for forwarding and comments or recommendations as appropriate.

(d) *Authorizations.* Entry authorizations will state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization. Authorizations to enter and re-enter may be issued to resident U.S. citizens and be valid for a specified time not to exceed two years. Authorizations may be issued to U.S. citizens residing abroad and to aliens to enter and re-enter for a specified period of time required to accomplish the purpose for which the authorization was issued not to exceed one year.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28958, July 14, 1976]

§ 761.12 Ships: Group authorizations.

Ships or other craft in the following categories, except those ships which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorizations:

(a) U.S. Public vessels, to enter all defense areas.

(b) U.S. private vessels which are: (1) Under charter to the Department of Defense (including the Military Sealift Command), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clearances, to enter defense areas as authorized by controlling Defense Department agency.

(c) [Reserved]

(d) Privately owned local craft, registered with and licensed by appropriate local U.S. Government authorities, and owned and operated by local inhabitants who have been granted an authorization to enter the local defense area at the discretion of the local commanders.

(e) Foreign flag ships traveling on diplomatic or other special clearance or for which special arrangements have been made under international agreements or treaties.

(f) Ships operating under a group authorization issued by the Chief of Naval Operations.

(g) Ships in distress, subject to local clearances and control by senior officer present.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.13 Ships: Individual authorizations.

(a) *Applications; form; filing.* Applications for authorization to navigate ships within the limits of defense areas shall be filed with the cognizant Entry Control Commander by letter or telegram including the following information and any additional information that may be relative to the proposed operation:

(1) Name of ship.

(2) Place of registry and registry number.

(3) Name, nationality and address of operator.

(4) Name, nationality and address of owner.

(5) Gross tonnage of ship.

(6) Nationality and numbers of officers and crew (include crewlist when practicable).

(7) Number of passengers (include list when practicable).

(8) Last port of call prior to entry into area for which clearance is requested.

(9) Purpose of visit.

(10) Proposed date of entry and estimated duration of stay.

(b) *Processing.* Authorization for single entries or for multiple entries for a period not to exceed one year may be granted or denied by an Entry Control Commander. Authorizations for multiple entries for a period to exceed one year or for special group entries must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.14 Aircraft: Group authorizations.

Aircraft in the following categories, except those aircraft which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) U.S. public aircraft to enter all defense areas.

(b) U.S. private aircraft which are under charter to the Department of Defense (including the Military Airlift Command), or operating under a contract with the Department of Defense providing for the employment of such aircraft to overfly U.S. island positions to enter defense areas as authorized by controlling Defense Department agency. If landing at U.S. military facilities is required, see § 761.15(a).

(c) Foreign flag aircraft for which special arrangements have been made under international agreements or treaties.

(d) Aircraft operated by companies authorized to utilize naval facilities in defense areas for regular commercial activity, to enter defense areas associated therewith. For landing clearance at U.S. military facilities, see § 761.15(a).

(e) Any aircraft in distress, subject to local clearance and control by senior officer present.

[41 FR 28958, July 14, 1976]

§ 761.15 Aircraft: Individual authorizations.

(a) *Special procedures.* In addition to the entry authorization to enter or navigate within the defense area concerned, certain special procedures must be followed by aircraft:

(1) If landing at U.S. naval aviation facilities, an Aviation Facility License must be obtained, in accordance with Secretary of the Navy Instruction 3770.1B, Use of Department of the Navy aviation facilities by other than United States Department of Defense aircraft.

(2) If landing at U.S. Air Force aviation facilities, a Civil Aircraft Landing Permit must be obtained, in accordance with Department of the Airforce Regulation 55-20, Use of United States Air Force installations by other than United States Department of Defense aircraft.

(3) Foreign public aircraft must obtain diplomatic clearance or clearance under applicable special agreements or treaties.

(b) *Application; Form; Filing.* Applications for authorization to navigate aircraft within the limits of defense areas shall be made by letter or telegram addressed to the appropriate entry control commander as indicated in § 761.9 with information copies to the Chief of Naval Operations, Commander in Chief, U.S. Atlantic (or Pacific) Fleet, as appropriate, and other local commanders who are known to be concerned. Applications shall include the following:

(1) Type and serial number of aircraft (the number of aircraft in flight if a mass movement is involved), nationality and name of registered owner.

(2) Name and rank of senior pilot.

*(3) Number in crew.

*(4) Number of passengers and whether military or civilian; include name (and rank) of distinguished passengers.

(5) Purpose of flight.

(6) Plan of flight route, including:

(i) Point of origin of flight and its destination.

*See "Note" on next page.

(ii) Estimated date and times of arrival and departure at all airspaces covered by this Part 761 including stops within the Trust Territory, when pertinent.

(7) Radio call signs of aircraft and radio frequencies available.

(8) Whether cameras are to be carried and whether they will be used.

*(9) Whether arms are to be carried.

*(10) Whether authorization to land as indicated in § 761.15(a) has been obtained.

NOTE: Information on those items marked with an asterisk (*) need not be reported when the aircraft will only overfly the areas covered by this part.

(c) *Processing.* Authorization for individual entries or for multiple entries for a period not to exceed three months may be granted by an Entry Control Commander. Authorizations for multiple entries over a period to exceed three months and applications for group authorizations must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

[41 FR 28958, July 14, 1976]

§ 761.16 Notice of action.

All applicants will be kept advised of action being taken relative to the processing of applications. Individuals whose applications cannot be processed promptly (usually within ten working days) or whose applications must be forwarded to another office for processing will be notified of the anticipated delay and advised of the approximate time when action may be expected to be taken. Under no circumstances will a notice of disapproval include a statement of the reason therefor. Copies of all notices will be distributed to commands and Entry Control Commanders concerned. Copies of all notices of disapproval will be mailed to the Chief of Naval Operations concurrently with the mailing to the applicant.

§ 761.17 Revocation.

Entry authorizations will be revoked only by an Entry Control Commander upon being advised of the discovery of information which would have been ground for denial of the initial request. Such a revocation will be confirmed in writing to the holder of an entry authorization. No reason for revocation of the entry authorization will be given. When an entry authorization is revoked, a one-way permit will be issued as appropriate, to permit the ship, aircraft, or person to transit the defense area in order to depart from a contiguous area.

§ 761.18 Appeals.

(a) Appeals may be filed with the Entry Control Commander who issued the denial or revocation. It shall contain a complete statement of the purpose of the proposed entry and a statement of reasons why the entry should be authorized, including a showing that the entry will be consistent with the purposes of national defense.

(b) Appeal letters shall be forwarded promptly to the next superior Entry Control Commander with an endorsement setting forth the reasons for the de ial or revocation and a recommendation as to the action to be taken by the superior.

(c) The superior may act on the appeal and notify the applicant of the decision, or he may forward the appeal to the next superior and notify the applicant of this referral.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28959, July 14, 1976]

§ 761.19 Forms.

The following forms shall be used in connection with the processing of applications for authorization to enter defense areas and for revocation of authorizations as indicated:

(a) *Application.* Statement of Personal History (Form DD 398, Stock Number 0102-004-220) may be obtained from NAVPUBFORMCEN, Building 26, 5801 Tabor Ave., Philadelphia, PA 19120.

(b) *Entry authorization.* (1) Defense Area Entry Authorization (OPNAV-Form 4600-2 (Rev. 5-59) may be obtained from Office of the Chief of Naval Operations (OP-09B33), Navy Department, Washington, DC 20350.

(2) Letter or message authorization.

(c) *Disapproval of request for entry authorization.*

MY DEAR ————: Your application of —— has been reviewed and we regret to advise you that the requested authorization for ———— to enter ———— is not granted as the entry at this time for the purpose stated is not considered to be in the interest of national defense.

The application may be resubmitted again in six months at which time it will be reconsidered in the light of then existing circumstances.

If you desire to appeal this decision, you may do so by submitting a letter to this office setting forth in full why you consider that the granting of the application would be in the interest of national defense and any other information that you believe will be of value of this person considering the appeal. Your letter will be forwarded to the appropriate authority for review and you will be advised in due course of his determination.

Sincerely yours,

(d) *Revocation of entry authorization.*

MY DEAR ————: This is to notify you that entry authorization to enter ———— granted by (issuing activity) on ——— is hereby revoked effective this date.

Sincerely yours,

[41 FR 28959, July 14, 1976]

Subpart D—Additional Instructions

§ 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

(a) By virtue of the authority vested in the President by section 44 of the United States Criminal Code, as amended and reenacted in 18 U.S.C. 2152, the President has prescribed the following additional regulations in Executive Order 9275 of November 23, 1942 (7 FR 9767; 1943 Cum. Supp. p. 1227) to govern persons and vessels within the limits of defensive sea areas theretofore or thereafter established.

(1) No person shall have in his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, negative or positive, can be made, except in the performance of official duty or employment in connection with the national defense, or when authorized pursuant to the provisions of the Act approved June 25, 1942 (Pub. L. 627, 77th Congress), as amended (50 U.S.C. App. 781-785), and the regulations promulgated thereunder (7 FR 7307; 32 CFR 765.19(b)).

(2) It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any person, prior to the time any vessel enters any defensive sea area or upon the boarding by any person of any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(3) There shall be prominently displayed on board all vessels, except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the regulations prescribed in Executive Order 9275.

(4) Any person violating section 1 of Executive Order 9275 (restated in paragraph (a)(1) of this section) shall be liable to prosecution as provided in section 44 of the Criminal Code as amended and reenacted in 18 U.S.C. 2152.

(b) The regulations stated in paragraph (a) of this section are not a limitation on prosecution under any other statute that may have been violated by acts or omissions prohibited by Executive Order 9275.

PART 762—MIDWAY ISLANDS CODE

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AUTHORITY: Sec. 48, 74 Stat. 424; 3 U.S.C. 301 Exec. Order No. 11,048, 3 CFR, 1959-1963 Comp., p. 632, (1:32).

SOURCE: 41 FR 29672, July 19, 1976, unless otherwise noted.

NOTE: Nomenclature changes to Part 762 appear at 46 FR 18313, Mar. 24, 1981.

Subpart A—General

§ 762.1 Applicability.

(a) The local criminal and civil laws of the Midway Islands consist of this part, the provisions of the laws of the State of Hawaii adopted pursuant to § 762.16(a) and § 762.112(a), applicable provisions of the laws of the United States, and those laws made applicable under the special maritime jurisdiction contained in the Act of June 15, 1950 (ch. 253, 64 Stat. 217).

(b) For the purposes of this part, the Midway Islands include all public lands on, and all territorial waters and the contiguous zone adjacent to or surrounding, the Midway Islands, Hawaiian Group, between the parallels of 28°5′ and 28°25′ North Latitude, and between the meridians of 177°10′ and 177°30′ West Longitude, as were placed under the jurisdiction and control of the Navy Department by the provisions of Executive Order No. 199-A of January 20, 1903, as superseded by Executive Order No. 11048 of September 5, 1962.

§ 762.3 Purpose.

The purpose of this Part 762 is to provide:

(a) For the civil administration of the Midway Islands;

(b) For vesting powers and duties in appropriate officers of the United States for the civil administration of the Midway Islands, including judicial and executive functions;

(c) Certain criminal provisions applicable to the Midway Islands not otherwise provided for, and penalties for their violations;

(d) A judicial system for the Midway Islands not otherwise provided for; and

(e) Certain civil laws for the Midway Islands not otherwise provided for.

§ 762.4 Scope.

(a) This part is applicable to all civilian and nonmilitary persons, and to all military personnel for matters involving civil administration, civil law, or criminal offenses not otherwise covered by the Uniform Code of Military Justice, while such persons are on the Midway Islands.

(b) In no event shall the provisions of this part supersede federal law, or the Uniform Code of Military Justice, nor shall the provisions of this part derogate the inherent or delegated authority, responsibility, and powers of the Commanding Officer, U.S. Naval Air Facility, Midway Island, under U.S. Navy Regulations, 1973, the Uniform Code of Military Justice, other pertinent Navy directives, and federal law.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

§ 762.6 Executive authority; duration.

The executive authority at the Midway Islands is vested in the Secretary of the Navy. The Commanding Officer, U.S. Naval Air Facility, Midway Island, is the agent of the Secretary or his disignee in carrying out any function, power, or duty under this Part 762. The Commanding Officer's authority commences upon his assumption of command of U.S. Naval Air Facility, Midway Island, and continues until he is relieved of that command by replacement. In the event of the absence, disability, or death of the Commanding Officer, the Acting Commanding Officer of U.S. Naval Air Facility, Midway Island, is vested with the authority prescribed in this part for the Commanding Officer and shall remain so vested until the return, recovery, or replacement of the Commanding Officer.

§ 762.8 Authorized functions, powers, and duties.

The Commanding Officer may, personally or through his staff:

(a) Issue citations for violations of Subpart C of this part;

(b) Abate any public nuisance upon the failure of the person concerned to comply with a removal notice;

(c) Make sanitation and fire-prevention inspections;

(d) Perform marriages, and maintain records of vital statistics, including birth, marriage, and death certificates;

(e) Inspect vehicles, including bicycles, for roadworthiness, and boats for seaworthiness;

(f) Confiscate property used in committing a crime;

(g) Investigate accidents and suspected crimes;

(h) Move unlawfully parked vehicles, boats, or aircraft;

(i) Take possession of lost or abandoned property and dispose of it under the provisions of 10 U.S.C. 2575 and applicable Navy directives;

(j) Delay or restrict the departure of any aircraft for reasonable cause;

(k) Impose quarantines;

(l) Impound and destroy unsanitary food, fish, or beverages;

(m) Evacuate any person from a hazardous area;

(n) Establish and maintain a facility for the lawful restraint or confinement of persons and provide for their care;

(o) Remove any person from the Midway Islands for cause;

(p) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;

(q) Perform any other acts, not inconsistent with this part or other applicable laws or regulations, that he considers necessary for protecting the health and safety of persons and property on the Midway Islands: and

(r) Issue any order or notice necessary to implement this section.

§ 762.10 Emergency authority.

During the imminence and duration of any emergency, the Commanding Officer may perform any acts necessary to protect life and property.

Subpart C—Criminal Law; Petty Offenses; Penalties

§ 762.15 General.

In addition to any act made criminal in this part, any act committed on Midway Islands which would be a violation of the laws of the United States; or of the provisions of Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified; or any act committed on the Midway Islands that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States, is a criminal offense and shall be punished, respectively, according to this part; the laws of the United States; Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified; or according to the laws applicable on board United States vessels on the high seas. [The Act of June 15, 1950 (ch. 253, 64 Stat. 217).]

§ 762.16 Adoption of certain criminal provisions of the Hawaii Revised Statutes.

(a) *Offenses adopted.* Whoever on the Midway Islands is guilty of any act or omission, which, although not made punishable by an enactment of Congress or under §§ 762.20 through 762.39, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b) *Jurisdiction over such offenses.* The United States District Court for the District of Hawaii shall have jurisdiction to try all such offenses except those which are subject, under Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than $500 or both. Those offenses falling within the above-stated exception shall be tried in the Midway Islands Court.

§ 762.17 Conflicts of laws.

In no event shall the provisions of this part supersede the Uniform Code of Military Justice when the latter is applicable. Any adopted provisions of Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, which duplicate or conflict with any other provision of this part shall be of no effect.

§ 762.18 Time limitations.

(a) A prosecution for any petty offense under this part must be commenced within two years after it is committed.

(b) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(c) A prosecution is commenced either when an information is filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(d) The period of limitation does not run:

(1) During any time when the accused is absent from the Midway Islands or has no reasonably ascertainable place of abode or work within the Midway Islands, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when a prosecution against the accused for the same conduct is pending in the Midway Islands Court.

(e) Except those offenses which are subject, under Title 37 of the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than $500, or both, offenses charged and treated under § 762.16 (a) and (b), shall be subject to the appropriate time-limitation rules set forth in section 108, Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified.

§ 762.19 Petty offenses; general.

All offenses contained in §§ 762.20 through 762.39 and those offenses adopted under § 762.16(a), as they now appear or as they may be amended or recodified, which are subject, under Title 37, "Hawaii Revised Statutes," to a penalty of imprisonment for six months or less or a fine of not more than $500, or both, shall be termed "Petty Offenses" and subject to the penalties set forth in §§ 762.40 through 762.49.

§ 762.20 Breach of the peace offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, to engage in fighting, threatening, or other violent or tumultuous behavior; or to make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to any person present; or to create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;

(b) Having no legal privilege to do so, knowingly or recklessly to obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others. "Obstruction" as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, to refuse to obey a reasonable request or order by a peace officer, fireman, or other public official to move;

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard. An order to move under this paragraph addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control;

(d) To be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs, or other substance. As used in this paragraph, "substantially intoxicated" is defined as an actual and considerable disturbance of mental or physical capacities;

(e) With intent to arouse or gratify sexual desire of any other person, to expose one's genitals to a person to whom one is not married under circumstances in which one's conduct is likely to cause affront or alarm; or

(f) Who is a minor under the age of 18 years, except a person in the military, to loiter about or otherwise be on any street, road, beach or other public place or in any theater, club, or other facility between the hours of 12:00 midnight and 5:30 a.m. unless accompanied by an adult over the age of 21 years and with the express permission of such minor's parent or legal guardian; and for any parent, guardian, or other person having the legal care, custody, or control of any minor under the age of 18 years, except a person in the military, to allow or permit such minor to violate this ordinance.

§ 762.22 Offenses against property.

It shall be unlawful for any person, while on the Midway Islands:

(a) To loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or near the assigned living quarters and adjacent property of another, to peek in any door or window of any inhabited building or structure located thereon without lawful purpose;

(b) To enter upon any assigned residential quarter or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Who is a male to enter any area, building, or quarter reserved for women, except in accordance with established visiting procedures;

(d) Who is a female to enter any area, building, or quarter reserved for

men, except in accordance with established visiting procedures;

(e) To enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building;

(f) To enter or remain in any area or building designated and posted as "restricted" unless authorized by proper authority to be there; or

(g) To steal any services or property of a value of less than $50 belonging to or property of another.

§ 762.24 Moral offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in prostitution. "Prostitution" means the giving or receiving of the body for sexual intercourse for hire or for indiscriminate sexual intercourse with or without hire; or

(b) To do any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed. "Lewd Act" includes any indecent or obscene act.

§ 762.26 Alcoholic beverages offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii. It shall not be unlawful, however, for persons authorized to sell alcoholic beverages to sell beer with an alcoholic content of not more than 3.2 percent by weight to military personnel regardless of age; or

(b) To present or have in his possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of § 762.26(a).

§ 762.28 Vehicle offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To operate or use intentionally any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, for any purpose, without consent of the owner thereof or his authorized agent;

(b) To operate any bicycle that has not been properly registered with the Security Department, U.S. Naval Air Facility, Midway Island, within one week after entering U.S. Naval Air Facility, Midway Island, with such bicycle, or within 72 hours after ownership or possession thereof has been obtained on the Midway Islands.

(c) To operate any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, without due regard for safety of others;

(d) To operate any automobile, truck, bicycle, motorcycle, or other vehicle and disregard or disobey any traffic regulation, sign, or marking erected, inscribed, or placed by competent authority on the Midway Islands, including, but not limited to, "Stop," "Yield," "Speed," and "No Parking" signs;

(e) To operate a United States Government vehicle without holding a current United States Government operator's license for that type of vehicle;

(f) To operate a privately owned automobile, truck, motorcycle, or like motor vehicle without holding a valid operator's license from some State or territory of the United States;

(g) To operate any automobile, truck, bicycle, motorcycle, or other vehicle, aircraft, or boat or other vessel, or other means of conveyance while under the influence of alcoholic beverages, narcotic drugs, central nervous system stimulants, hallucinogenic drugs or barbituates; or

(h) To exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Islands is 15 miles per hour.

§ 762.30 Weapons offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) Other than a security patrolman or shore patrolman or other duly appointed official in the performance of an official duty, to carry a concealed pistol or other concealed firearm, or a concealed knife with a blade more than four inches long or with a blade capable of being opened by a mechanical device, commonly known as a switchblade knife; or

(b) Without proper authority, to keep or use in any place any dangerous weapons including rifles, shotguns, pistols, airguns, CO_2 guns, pellet guns, and BB guns.

§ 762.32 Offenses against the environment.

It shall be unlawful for any person, while on the Midway Islands:

(a) Knowingly to place, throw, drop, or allow to drop any litter on any property or in any waters or beach. "Litter" means rubbish, refuse, and debris of whatever kind or description, whether or not it is of value;

(b) To grossly waste potable water; or

(c) To remove, injure, or destroy any wild bird, egg, or seal, or for any owner of a dog or other pet to allow knowingly such dog or other pet to remove, injure, or destroy any wild bird, egg, or seal, or for the parent or legal guardian of any minor child to allow knowingly such minor child to remove, injure, or destroy any wild bird, egg, or seal.

§ 762.34 Miscellaneous offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in a trade, business, or other commercial activity on Midway Islands without first obtaining written permission from the Commanding Officer, U.S. Naval Air Facility, Midway Island;

(b) To smoke or ignite any fire in any designated and posted "No Smoking" area, or in the immediate proximity of any aircraft, fueling pit, or ordnance or pyrotechnic storage areas;

(c) Knowingly to report or cause to be reported to the Security Department, Fire Department, or any official thereof, or to any other public official, or willfully to activate, or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. "Emergency," as used herein, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(d) Intentionally to report to any shore patrolman, security patrolman, fireman, officer of the day, junior officer of the day, or other public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

§ 762.35 Attempt.

(a) A person is guilty of attempt to commit a crime if he commits an act, done with the specific intent to commit an offense, amounting to more than mere preparation and tending, even though failing, to effect its commission.

(b) It shall be unlawful for any person, while on the Midway Islands to attempt to violate any section of Subpart C, including all offenses adopted from Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified. Any person convicted of an attempt to commit an offense shall be subject to the same appropriate penalties authorized under §§ 762.40 through 762.49 for the commission of the offense attempted, except that attempts of all offenses adopted under § 762.16, except those which are subject, under Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment of six months or less or a fine of not more than $500, shall be punished as directed by appropriate sections of Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified.

§ 762.40 Penalties for petty offenses.

Whoever is found guilty of a violation of any petty offense under this subpart, other than § 762.28 (b) through (h), is subject to a fine of not more than $500 or imprisonment for not more than six months, or both.

§ 762.42 Penalties for motor vehicle violations.

Whoever is found guilty of a violation of any one of § 762.28 (b) through (h), is subject to a fine of not more than $100, imprisonment of not more than 30 days, or suspension or revocation of his privilege to drive a motor vehicle aboard U.S. Naval Air Facility, Midway Island, or any combination of, or all of, these punishments.

§ 762.44 Contempt.

Judges of the Midway Islands Court may, in any criminal case or proceeding, punish any person for disobedience of any order of the court, or for any contempt committed in the presence of the court, by a fine of not more than $100, or imprisonment of not more than 30 days, or both.

Subpart D—Midway Islands Court; Rules of Criminal Procedure

§ 762.50 Establishment; members; sessions.

(a) There is created a "Midway Islands Court" which is vested with the judicial authority provided in this Part 762. The court shall consist of such Navy judge advocates as are designated by the Commanding Officer, U.S. Naval Air Facility, Midway Island, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet. In the absence of an appointment to the contrary, the most senior in date of rank of those appointed shall act as senior judge.

(b) The Senior Judge shall appoint someone under his authority to act as Clerk of the Court who will be responsible for maintaining a public docket containing such information as the Senior Judge may prescribe.

(c) Sessions of the court are held on the Midway Islands at times and places designated by the Senior Judge.

(d) Normally, not more than one judge shall be required to hear any individual case.

§ 762.52 Attorney for the United States.

The Senior Judge may appoint any judge advocate or attorney to represent the United States in any criminal case in the Midway Islands Court or on appeal to the Commander, U.S. Naval Base, Pearl Harbor or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet.

§ 762.54 Criminal jurisdiction.

The Midway Islands Court has jurisdiction over all petty offenses and other minor violations of this part. The United States District Court for the District of Hawaii shall have jurisdiction over all other offenses adopted under § 762.16, over offenses against the laws of the United States, and over those offenses committed within the special maritime jurisdiction contained in the Act of June 15, 1950 (chapter 253, 64 Stat. 217).

§ 762.55 Venue.

Trial of all offenses under the jurisdiction of the Midway Islands Court shall be had at the U.S. Naval Air Facility, Midway Island; trial of all other offenses shall be in the United States District Court for the District of Hawaii.

§ 762.56 Rules of criminal procedure.

(a) Sections 762.56 through 762.79 govern the procedure in criminal proceedings in the Midway Islands Court. They shall be construed to ensure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expenses and delay.

(b) The judge of the court who presides at any trial or other criminal proceeding is responsible for the making of an appropriate record of the proceeding.

§ 762.58 Release prior to trial and bail.

(a) The release of any person arrested on the Midway Islands for a violation of this part shall be in accordance with 18 U.S.C. 3146 as it now appears or as it may be amended or recodified.

(b) When an offense has been charged by a citation issued by a security patrolman, shore patrolman, or other duly designated peace officer or the Commanding Officer, U.S. Naval Air Facility, Midway Island, bail shall be set in the amount prescribed by the Senior Judge for the violation. The

bail shall be paid in cash to the Clerk of the Court. The bail may be forfeited by the accused and the proceedings thereby terminated in the case of a violation of § 762.28 that does not involve a moving vehicle collision or intoxication while driving, or with permission of the court in the case of any other offense charged by citation pursuant to § 762.84.

§ 762.62 Information.

(a) Any petty offense may be prosecuted by a written information signed by the attorney charged with prosecuting the case. If, however, the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as the information. Offenses against the laws of the United States, offenses committed against the laws made applicable by the Act of June 15, 1950 (chapter 253, 64 Stat. 217), and offenses adopted under § 762.16, except those which are subject, under Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than $500, or both, shall be referred to the United States Attorney, Hawaii, for appropriate disposition.

(b) A copy of the information shall be delivered to the accused or his counsel as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 762.64 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the court shall give him a reasonable opportunity to procure counsel. If he cannot afford counsel or is unable to procure counsel after reasonable efforts have been expended, the court shall advise him of his right to have counsel appointed, and shall appoint a judge advocate or other lawyer counsel for the accused unless the accused shall have made a voluntary and intelligent waiver of his right to counsel.

(c) When both sides are ready for arraignment, or when the court determines that both sides have had adequate opportunity to prepare for arraignment, the court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in court, ask the accused whether he pleads "guilty" or "not guilty." The court shall enter in the record of the case the plea made to each charge.

(d) The accused may plead "guilty" to any or all of the charges against him, except that the court may at its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily and with understanding of the nature of the charge.

(e) The accused may plead "not guilty" to any or all of the charges against him. The court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty

(f) The accused may, at any stage of the trial, with the consent of the court, change a plea of not guilty to one of guilty. The court shall then proceed as if the accused had originally pleaded guilty.

(g) Nothing contained in this subpart shall be construed to diminish

any additional rights afforded military personnel under the Uniform Code of Military Justice.

§ 762.66 Trial.

(a) If the accused pleads not guilty or if a plea of guilty is not accepted by the court and a consequent plea of not guilty entered, the accused is entitled to a trial on the charges in accordance with the procedures prescribed in the Rules of Criminal Procedure for the United States District Courts, 18 U.S.C., except as otherwise provided in this part. There is no trial by jury for petty offenses.

(b) All persons shall give their testimony under oath or affirmation. The Senior Judge shall prescribe the oath and affirmation that may be administered by any judge or the Clerk of the Court.

(c) Upon completion of the trial, the court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

§ 762.68 Sentence.

(a) If the court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge.

(b) After a finding of guilty is made, either by virtue of an accepted plea of guilty or as the verdict of the court after trial, the court:

(1) May delay sentencing pending receipt of any presentencing report ordered by it;

(2) Shall, before imposing sentence, hear such statements, whether written or oral, by the prosecution and defense, if any, in regards to mitigation, extenuation, previous good character of the accused, matters in aggravation, and permissible evidence of bad character of the accused. In this regard, the accused or his counsel may introduce any reasonable statement he wishes in mitigation or extenuation or any evidence of previous good character. The prosecution may introduce evidence in aggravation including prior federal, state, or Midway Islands convictions. The prosecution may introduce evidence of previous bad character only if the accused has introduced evidence of previous good character; and

(3) Shall thereafter impose any lawful sentence, including, a suspended or partially suspended sentence; revocation or suspension of any Midway Islands automobile, truck, motorcycle, or other motor vehicle, or boat or other vessel permit in cases involving violations of § 762 28; or placement of accused on probation.

§ 762.70 Subpoenas.

(a) The Clerk of the Court shall issue subpoenas for the attendance of witnesses. The subpoena must include the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena to a party requesting it, setting forth the name of the witness subpoenaed.

(b) The clerk may also issue a subpoena commanding the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The court may direct that books, papers, and documents designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence. It may, upon their production, allow the books, papers, documents, or objects or portions thereof to be inspected by the parties and their representatives.

(c) Any peace officer or any other person who is not a party and who is at least 18 years of age may serve a subpoena. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) This section shall in no way be construed to limit federal subpoena powers, laws, or rules.

§ 762.72 Appeals.

(a) The defendant in any criminal case may appeal from any judgment of the Midway Islands Court to the Commander, U.S. Naval Base, Pearl Harbor, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet, by filing a notice of appeal with the Senior

Judge, and serving a copy on the attorney or judge advocate who represented the United States at trial.

(b) The notice must be served and filed within 15 days after the judgment of the Midway Islands Court.

(c) Upon receiving a notice of appeal, with proof of service on the attorney or judge advocate who represented the United States at trial, the Senior Judge shall forward the record of the case to the Commander, U.S. Naval Base, Pearl Harbor.

(d) The appellant must serve and file a memorandum with the Commander, U.S. Naval Base, Pearl Harbor, within 10 days after filing notice of appeal setting forth the grounds for appeal. The attorney or judge advocate who represented the United States at trial may file a reply memorandum within 10 days thereafter.

(e) The Commander, U.S. Naval Base, Pearl Harbor, may affirm, dismiss, or modify the order of the court, or exercise any of the other powers of the court. The judgment of the Commander, U.S. Naval Base, Pearl Harbor, is final.

(f) Cases tried in the United States District Court for the District of Hawaii shall be subject to federal laws and rules applicable to appeals.

§ 762.74 New trial.

A judge of the court may order a new trial as required in the interest of justice, or vacate any judgment and enter a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for a new trial or vacation of judgment is made.

Subpart E—Warrants; Arrests; Special Procedures

§ 762.80 Warrants.

(a) *Arrest warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for arrest if, upon complaint, it appears that there is probable cause to believe an offense has been committed and that the person named in the warrant has committed it. Probable cause, as used herein, means that there exist facts which are sufficient to lead a reasonably prudent and cautious man to a natural conclusion that the person to be arrested committed the offense for which he is to be arrested. The issuing officer shall:

(i) Place the name of the person charged with the offense in the warrant, or, if his name is not known, any name or description by which he can be identified with reasonable certainty;

(ii) Sign the warrant;

(iii) Describe in the warrant the offense charged;

(iv) Issue the warrant to a security patrolman, shore patrolman, or other duly designated peace officer for execution; and

(v) Place in the warrant a command that the person charged with the offense be arrested and brought before him.

(2) Each person making an arrest on the Midway Islands shall take the arrested person, without unnecessary delay, before the Commanding Officer, U.S. Naval Air Facility, Midway Island, or a judge of the Midway Islands Court, as appropriate.

(3) The official before whom an arrested person is brought shall inform him of the complaint against him. The official shall also advise the arrested person that he has the right to remain silent and make no statement; that any statement made, whether oral or written, may be used against him, that he has the right to consult with a lawyer and to have a lawyer with him during questioning and to seek advice before answering any questions; that he may employ civilian counsel of his own choice and at his own expense; that if he cannot afford a lawyer, or is a service member, the court will appoint one for him if he so desires; and that, if he decides to answer questions, he has the right to stop answering at any time and terminate the interrogation. Before any security patrolman, shore patrolman, or other duly designated peace officer questions any person arrested, he must advise the arrested person of his rights, as set forth above, whether such questioning occurs before or after the arrested person is brought before the appropriate official as designated above in this section. No warnings need be given,

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however, prior to general on-the-scene questioning or identification inquiries.

(b) *Search warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for search and seizure, if, after dispassionate and impartial consideration of all evidence, information, and circumstances involved, probable cause is deemed to exist. Probable cause, as used herein, means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

(i) An offense probably is about to be, is being, or has been committed;

(ii) Specific fruits or instrumentalities of the crime, contraband, or evidence exist; and

(iii) Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

(2) If, after considering all information, the judge shall decide to issue a search warrant, such warrant shall specifically include the following information:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person, official, security patrolman, shore patrolman, or other duly designated peace officer requesting the warrant;

(iii) The name and address of the person(s) suspected and the specific offense(s) of which he is suspected;

(iv) The address, place, or structure which is to be searched;

(v) The general nature of the items intended to be seized;

(vi) The information presented or reasons for suspecting the suspected person(s) in general; and

(vii) An authorization to search the described place for the property specified and, if the property is found there, to seize it, followed by the date, time, capacity, and signature of the judge issuing such warrant.

(3) A search warrant must be executed and returned to the issuing authority within five days after date of issuance. A search warrant executed within the five-day period shall be deemed to have been timely executed and no further showing of timeliness need be made.

(4) Security patrolmen, shore patrolmen, and other duly designated peace officers or other designated personnel conducting searches shall do so in accordance with the issued warrant.

(5) Any property seized as a result of a search or in connection with an alleged offense (unless property is highly perishable) is to be retained in a secure place pending trial in accordance with the orders of the court. All seized property shall be securely tagged with the following information:

(i) Date seized;

(ii) Property searched and location of seized article(s) when so seized;

(iii) Person ordering search and warrant number;

(iv) Signatures of person searching and witness; and

(v) Place where property is now located and names and addresses of any persons who have had custody thereof prior to deposit in the secure place required by this paragraph. A complete chain of custody record is to be kept.

(6) The property must be produced in court, if practicable. At the termination of the trial, the court shall restore the property or the funds resulting from the sale of the property to the owner, or make such other proper order as may be required and incorporate its order in the record of the case.

(c) *Sanitation and fire prevention inspection.* (1) Any judge of the Midway Islands Court may issue a warrant to inspect property on the Midway Islands for purposes of maintaining sanitation and fire prevention.

(2) Such warrant shall indicate:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person requesting the warrant;

(iii) Property description or address of place or structure to be inspected;

(iv) General purpose of inspection;

(v) Date and time inspection intended to be made; and

(vi) An authorization to inspect the described place for the purpose specified, followed by the date, time, capacity, and signature of judge issuing the warrant.

§ 762.82 Arrests.

(a) Any person may make an arrest on the Midway Islands, without a warrant, for any crime (including a petty

offense) that is committed in his presence.

(b) Any security patrolman, shore patrolman, or other duly designated peace officer may, without a warrant, arrest any person on the Midway Islands who violates any provision of this Part 762 or commits a crime that is a violation of the laws of the United States or the laws made applicable to the Midway Islands under the Act of June 15, 1950 (chapter 253, 64 Stat. 217), in his presence, or that he has probable cause to believe that person to have committed.

(c) In making an arrest, a security patrolman, shore patrolman, or other duly designated peace officer must display a warrant, if he has one, or otherwise clearly advise the person arrested of the violation alleged, and thereafter require him to submit and be taken before the appropriate official on the Midway Islands.

(d) In making an arrest, a security patrolman, shore patrolman, or other duly designated peace officer may use only the degree of force needed to effect submission, and may remove any weapon in the possession of the person arrested.

(e) A security patrolman, shore patrolman, or other duly designated peace officer may, whenever necessary to enter any building, vehicle, aircraft, or vessel to execute a warrant of arrest, force an entry after verbal warning.

(f) A security patrolman, shore patrolman, or other duly designated peace officer may force an entry into any building, vehicle, aircraft, or vessel whenever:

(1) It appears necessary to prevent serious injury to persons or damage to property, and time does not permit the obtaining of a warrant;

(2) To effect an arrest when in hot pursuit; or

(3) To prevent the commission of a crime which he reasonably believes is being committed or is about to be committed.

§ 762.84 Citation in place of arrest.

In any case in which a security patrolman, shore patrolman, or other duly designated peace officer may make an arrest without a warrant, he may, under such limitations as the Commanding Officer may impose, issue and serve a citation, or serve a citation issued by the Commanding Officer, on a person in place of arresting him if the officer considers that the public interest does not require an arrest. The citation must briefly describe the offense charged and direct the accused to appear before the Midway Islands Court at a designated time and place.

§ 762.86 Abatement of nuisance.

Whenever the Commanding Officer determines that, on any premises on the Midway Islands, a condition exists that is unsanitary or hazardous, that may be injurious to the public, or is otherwise a nuisance, he may order the condition abated. If the legal custodian of the premises concerned does not take action to abate the nuisance within 30 days after the order is issued, the Commanding Officer may enter on the premises and abate the nuisance for, and at the expense of, the custodian.

Subpart F—Registration and Permit Regulations

§ 762.90 Registration of certain property.

(a) Each person who has custody of any of the following on the Midway Islands shall register it with the Commanding Officer:

(1) A privately owned motor vehicle;

(2) A privately owned boat;

(3) An animal;

(4) Any device, weapon, or instrument designed for inflicting bodily injury, including a gun, pistol, or other firearm operated by air, gas, spring, or otherwise;

(5) Any narcotic or dangerous drug not obtained on prescription, and all poisons other than commonly used household poisons or toxic substances; or

(6) Any known explosive.

(b) Each person who obtains custody of an article described in paragraphs (a)(4), (5), or (6) of this section shall register it immediately upon obtaining custody. Each person who obtains custody of any other article described in paragraph (a) of this section shall reg-

ister it within 10 days after obtaining custody.

§ 762.92 Permits.

Subject to reasonable restrictions and conditions that he considers appropriate, the Commanding Officer, U.S. Naval Air Facility, Midway Island, may require a Midway Islands permit for the following:

(a) Any business, commercial, or recreational activity conducted for profit, including a trade, profession, calling, or occupation, or an establishment where food or beverage is prepared, offered, or sold for human consumption (except for personal or family use);

(b) The practice of any medical profession, including dentistry, surgery, osteopathy, and chiropractic;

(c) The erection of any structure or sign, including a major alteration or enlargement of an existing structure;

(d) The discharge of explosives or fireworks or of firearms, guns, or pistol operated by air, gas, spring, or otherwise, or any other weapon;

(e) The burial of any human or animal remains, except that fish and bait scrap may be buried at beaches where fishing is permitted without obtaining a permit;

(f) Keeping or maintaining any animal, including dogs;

(g) All vehicles (including bicycles), and operators thereof, except aircraft. The operator of a vehicle shall display his permit or permit number on the vehicle in a place and manner prescribed by the Commanding Officer;

(h) Boats and boat operators. The operator of a boat or other vessel shall display his permit or permit number on or in the vessel in a place and manner prescribed by the Commanding Officer;

(i) Food handlers;

(j) Drugs and narcotics not obtained on prescription, and poisons other than commonly used household poisons or toxic substances; or

(k) Building construction.

§ 762.94 Expiration of permits.

(a) Each Midway Islands permit expires on the earliest of the following dates:

(1) Two years after the date it is issued;

(2) The date specified on the permit;

(3) In the case of a motor vehicle, boat, or other vessel, or firearm, the date its custody is transferred to any person other than the holder of the permit therefor; or

(4) The date it is revoked by the Commanding Officer.

(b) Notwithstanding paragraph (a)(1) of this section, the Commanding Officer may issue a permit for a period longer than two years to coincide with the terms of any agreement between the Department of the Navy and the permit holder, applicable to the Midway Islands.

§ 762.96 Revocation or suspension of permits.

(a) The Commanding Officer may, after notifying the holder of a Midway Islands permit and giving him an opportunity to be heard, order the permit suspended or revoked for cause, including:

(1) Lack of physical fitness required to hold the permit;

(2) Lack of roadworthiness of a vehicle, or of seaworthiness of a boat or other vessel;

(3) Lack of need for the permit;

(4) Breach of any term or condition of the permit; or

(5) Conviction for violation of any regulation of this part where the violation is related to activities conducted under the permit.

(b) In any case in which he determines that an emergency exists requiring immediate action, the Commanding Officer may issue an order of suspension or revocation, effective immediately, without notice. However, the permit holder may, within 10 days after the suspension or revocation, request a hearing. If he so requests a hearing, he is entitled to it. The emergency order is not stayed pending hearing.

Subpart G—Civil Small Claims Law

§ 762.100 Applicable law and jurisdiction over small claims.

(a) The Midway Islands Court shall have jurisdiction over civil cases for the recovery of money only where the amount claimed does not exceed $500

exclusive of the interest and costs except as provided by § 762.108.

(b) The court's jurisdiction is further limited in that no such claim cognizable under paragraph (a) of this section shall be within the court's jurisdiction unless:

(1) The claim arises or has arisen on the Midway Islands;

(2) All plaintiffs and all defendants reside, at the time of trial, on the Midway Islands; and

(3) The claim does not fall within the special maritime jurisdiction under the Act of June 15, 1950 (chapter 253, 64 Stat. 217).

(c) Actions shall be commenced and maintained in the Midway Islands Court under the procedures set out below and conducted in such a manner as to do substantial justice and equity between the parties. When acting on such actions, the court shall be termed the Small Claims Court.

§ 762.102 Small claims procedure; complaint and service.

(a) Actions shall be commenced in the court by the filing of a statement of claim, in concise form and free of technicalities. All claims shall be verified by the claimant, whether as a party plaintiff or counterclaimant, or by his agent, by oath or affirmation in the form herein provided, or its equivalent. The Clerk of the Court shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the court, but his services shall not be available to a corporation, partnership, or association, or to any individual proprietorship in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by personal service, by registered mail, or by certified mail with return receipt.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned with the signature thereon of the party to whom addressed, the clerk shall attach it to the original statement of claim, and it shall constitute prima facie evidence of personal service upon the defendant.

(c) When notice is served personally, the server shall make proof of service by affidavit sworn to before the Clerk of the Court or before any notary public, showing the time and place of the service.

(d) The actual cost of service shall be taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

IN THE MIDWAY ISLANDS SMALL CLAIMS COURT

_____

(Plaintiff)

_____

(Address)

vs.

_____

_____

(Defendant)

STATEMENT OF CLAIMS

(Here the claimant, whether as party plaintiff or counterclaimant, or at his request the clerk, will insert a concise statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:

THE MIDWAY ISLANDS SS

———— being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to claimant, whether as party plaintiff or counterclaimant, exclusive of all set-offs and just grounds of defense.)

_____

[Plaintiff (or agent)]

Subscribed and sworn to before me this —— day of ————, 19——.

_____

_____

_____

Clerk (or notary public)

NOTICE

To: _____
Defendant

_____
Home address

_____
Business address

You are hereby notified that _____ has made a claim and is requesting judgment against you in the sum of _____ dollars ($_____), as shown by the foregoing statement. The court will hold a hearing upon this claim on _____ at _____ m. in the Small Claims Court at _____.

_____
(address of court)

You are required to be present at the hearing in order to avoid judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

(Seal)

_____
Clerk of the Court
Midway Islands Courts

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a notice of the day and hour set for the hearing. The hearing shall not be less than 15 days nor more than 30 days from the date of the filing of the action unless a continuance is granted by the judge for good cause shown. All actions filed in the court shall be made returnable therein.

§ 762.104 Time limitations.

All claims must be commenced as set out in § 762.102, within two years after the claim arises. A claim for money arises when it is due, owing, and unpaid.

§ 762.106 Costs and fees; waiver.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims Court shall be not more than $5. Other fees shall be as the court prescribes. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the court shall be "Prepayment of costs waived" or "Costs waived." The terms "pauper" or "in forma pauperis" may not be employed in the court. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the court while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the court.

§ 762.108 Set-off or counterclaim; pleading; retention of jurisdiction.

If the defendant, in an action in the Small Claims Court, asserts a set-off or counterclaim, the judge may require a formal and concise plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims Court, as provided by § 762.100, but is for less than $1000, the action shall remain in the Small Claims Court and be tried therein in its entirety. No set-off or counterclaim for an amount greater than $1000 may be asserted in the Small Claims Court.

§ 762.109 Jury trial; demand.

In a case filed or pending in the Midway Islands Court under § 762.100 in which a party entitled to a trial by jury under amendment VII, United States Constitution, files a demand therefor, the case shall be assigned to and tried in the United States District

Court for the District of Hawaii under the procedure provided for jury trials in that court.

§ 762.110 Pre-trial settlement.

On the return day specified by § 762.102(g), or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case, the judge shall make an earnest effort to settle the controversy by conciliation. If no settlement is effected, the judge shall proceed with the hearing on the merits pursuant to § 762.112.

§ 762.112 Trial.

(a) The parties and witnesses shall be sworn. In any case in which the civil rights, powers, and duties of any person on the Midway Islands are not otherwise prescribed by the laws of the United States or the laws made applicable under the Act of June 1950 (chapter 253, 64 Stat. 217), the judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, as contained in the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, and Hawaii case law. In this regard, the judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions related to privileged communications.

(b) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by § 762.102(f), or under rules of court, or on ex parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to trial on the merits, or have default judgment entered in his favor on any counterclaim filed in the manner provided herein for a plaintiff, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution or make any other disposition thereof as justice requires.

(c) Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of himself or another in the Small Claims Court. The services of an unlicensed person appearing under this paragraph shall be without compensation, either by way of direct fee, contingent fee, or otherwise.

(d) The judge of the court who presides at any trial is responsible for the making of an appropriate record of the proceeding.

§ 762.114 Judgments.

After trial, the judge may immediately render his decision and enter judgment or take the case under submission. In all cases, the judge should render a decision and enter appropriate judgment within 20 days after the close of the trial.

§ 762.116 Award of costs.

In any action pursuant to this subpart the award of costs is in the discretion of the court, which may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. No attorneys' fees or commissions shall be allowed or awarded by any judgment of the Small Claims Court.

§ 762.118 No appeal.

There shall be no appeal from a judgment of the court, but the court may alter or set aside any judgment upon application of either party after review of the record.

§ 762.120 Judgment creditors and remedies.

(a) After any final judgment is rendered by the court, the judgment debtor concerned may deposit the sum adjudged owed with the court for payment of the claim, pay the judgment creditor directly, or make such other fair and reasonable agreement for payment or settlement of the claim with the judgment creditor. Payment, in full or by agreement or settlement between the parties after final judgment has been rendered, shall satisfy the judgment and extinguish the claim.

(b) If voluntary payment is not made by the judgment debtor after

final judgment is rendered, in an action pursuant to §§ 762.100 through 762.113, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.

(c) Any final judgment of the Small Claims Court shall upon order of the court become a statutory lien upon any and all personal property owned by the judgment debtor concerned and located on the Midway Islands. Such lien may be enforced by attachment, levy, judicial sale, or as the court may otherwise direct.

§ 762.126 Parties.

Wherever the term party or parties appears herein, or any reference is made to individuals desiring to present a claim, then such term or terms of reference shall mean and include a party defendant having a counterclaim, offset, or crossclaim to present in the action.

§ 762.128 Forms and public information.

The Midway Islands Court shall cause to be published an information booklet or sheet describing, in language readily understandable by a layman, the procedures of the Small Claims Court, the remedies available upon judgment in the Small Claims Court, and such other information as will facilitate the utilization of the small claims procedure; and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon, and after judgment.

Subpart H—Savings Clause

§ 762.130 Severability of subparts, sections, paragraphs, or provisions.

In the event that any subpart, section, paragraph, or provision of this part shall be declared unconstitutional or superseded by applicable federal legislation, the remainder shall nevertheless remain valid and shall be applied so as to be consistent with such constitutional provisions or overriding legislation.

PART 763—RULES GOVERNING PUBLIC ACCESS

Subpart A—Entry Regulations for Kaho'olawe Island, Hawaii

Sec.

763.1 Purpose.
763.2 Definition.
763.3 Background.
763.4 Entry restrictions.
763.5 Entry procedures.
763.6 Violations.

AUTHORITY: 50 U.S.C. 797; DOD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714; Exec. Order No. 10436, 3 CFR 1949-1953 Comp. p. 930, (1958).

SOURCE: 47 FR 27553, June 25, 1982, unless otherwise noted.

Subpart A—Entry Regulations for Kaho'olawe Island, Hawaii

§ 763.1 Purpose.

The purpose of this Subpart is to promulgate regulations for entry to Kaho'olawe Island, Hawaii, and its adjacent waters.

§ 763.2 Definition.

For the purpose of this Subpart, Kaho'olawe Island includes that portion reserved for naval purposes by Executive Order No. 10436 of February 20, 1953.

§ 763.3 Background.

(a) Kaho'olawe Island is used by the armed forces of the United States as a training area including bombing and gunnery training ranges under authority granted by Executive Order No. 10436. Training operations frequently involve the use of live ordnance, creating an obvious danger to persons on or near the island. Moreover, a large amount of unexploded ordnance is present on Kaho'olawe Island and in adjacent waters.

(b) Individuals who enter the island of Kaho'olawe without authority expose themselves to extremely hazardous conditions. In addition, the presence of unauthorized persons on Kaho'olawe Island or in adjacent waters is likely to interfere with the use of the island for military training. Accordingly, it is necessary to prohibit entry to Kaho'olawe Island except under the controlled circumstances set forth in this Subpart.

§ 763.4 Entry restrictions.

(a) Entry by any person upon Kaho'olawe Island for any purpose is prohibited without advance authorization from Commander THIRD Fleet. This prohibition applies to all areas of Kaho'olawe Island reserved for naval purposes by Executive Order No. 10436.

(b) Entry by any person into the restricted waters adjacent to Kaho'olawe Island for any purpose is prohibited without advance authorization from Commander THIRD Fleet. This prohibition applies to all waters described in 33 CFR 204.223(4).

§ 763.5 Entry procedures.

(a) It is the policy of the Commander THIRD Fleet to authorize, in accordance with the spirit of the American Indian Religious Freedom Act (1978), reasonable access to Kaho'olawe Island during periods when it is not used for military training. However, because there are bombs and other explosives on and under the surface and in the waters of the island, and because there are significant archaeological resources thereon (in 1981, the island was placed on the National Register of Historical Places as an Archaeological District), Navy representatives accompany each island visitation to safeguard both the vistitor(s) and the island's archaeological resources. In this regard, in order to ensure the safety of visitors to the island and its archaeological resources, persons and organizations wishing access to Kaho'olawe Island must comply with the following appropriate procedures: Civilians (except authorized U.S. and State representatives) must:

(1) Request, in writing, access authorization from Commander THIRD Fleet (Code 01K), Pearl Harbor, Hawaii 96860, at least 15 days prior to the access requested, providing therein confirmed access plans (including the exact number of visitors, time, and location of access, designation of person in charge, and any other pertinent information); and

(2) Submit to Commander THIRD Fleet (at the aforementioned address) properly endorsed Standard Liability Release Form (obtainable from Commander THIRD Fleet), for each access participant, at least five (5) days prior to the requested access.

(b) In evaluating each request, the factors just enumerated will be weighed against training commitments, safety requirements, specical projects, and the amount and cost of military supervision necessitated by a granting of the request. Requests for entry will be considered on an individual basis. If a request is granted, the permission to enter Kaho'olawe Island authorizes one visit only, and shall not be construed as authorization for more than one entry unless the authorization itself specifically states otherwise. Moreover, entry pursuant to advance consent, which is not in accordance with the terms and conditions permitted by Commander THIRD Fleet, shall be deemed a violation of this Subpart.

(c) For safety reasons, it is not Commander THIRD Fleet's policy to permit children below the age of 15 access to Kaho'olawe Island.

§ 763.6 Violations.

(a) Any person who violates this subpart is subject to prosecution under 18 U.S.C. 1382, which provides in relevant part:

> Whoever * * * goes upon any * * * naval * * * reservation * * * for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500 or imprisoned not more than six months, or both.

(b) Additionally, persons who violate this Subpart are subject to prosecution under the Internal Security Act of 1950 (50 U.S.C. 797), violations of which may result in a maximum penalty of imprisonment for one year, or a fine of $5,000 or both.

SUBCHAPTER G—MISCELLANEOUS RULES

PART 765—RULES APPLICABLE TO THE PUBLIC

Sec.

765.1—765.2 [Reserved]
765.3 Security violation.
765.4 Visitor control.
765.5 Access to vessels or sites at which naval vessels are under construction, conversion, repair or overhaul.
765.6 Regulations for Pearl Harbor, Hawaii.
765.9—765.11 [Reserved]
765.12 Navy and Marine Corps absentees; rewards.
765.13 Insignia to be worn on uniform by persons not in the service.

AUTHORITY: Secs. 5031, 6011, 70A Stat. 278, 375, as amended, sec. 133, 76 Stat. 517, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 133, 5031, 6011, unless otherwise noted.

§§ 765.1—765.2 [Reserved]

§ 765.3 Security violation.

Under section 21 of the Internal Security Act of 1950 (50 U.S.C. 797), the Secretary of Defense has designated certain categories of Navy and Marine Corp commanding officers as having the authority to promulgate regulations pursuant to that section for protection of property or places under their command. (See 19 FR 5446.) For buildings or parts of buildings, and property or places therein or adjacent thereto, at the seat of government, occupied by Department of Defense agencies (except those occupied exclusively by field activities), the regulations are promulgated by the Secretary of the Navy under authority of the Secretary of Defense insofar as those buildings, parts, property or places are administered by, or insofar as space therein is assigned to, the Department of the Navy; under the latter alternative, the Secretary's regulatory power is additional to that of the head of the administering agency. The violation of regulations so promulgated is punishable by a fine of not to exceed $5,000 or imprisonment for not more than one year, or both. See also 18 U.S.C. 1382.

(Sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 171a)

[23 FR 166, Jan. 9, 1958]

§ 765.4 Visitor control.

Access to any naval activity afloat or ashore is subject to (a) the authorization and control of the officer or person in command or charge and (b) restrictions prescribed by law or cognizant authority to safeguard (1) the maximum effectiveness of the activity, (2) classified information (E.O. 10501, 18 FR 7049, as amended, 50 U.S.C. 401 note), (3) national defense or security, and (4) the person and property of visitors as well as members of the Department of Defense, and Government property.

[28 FR 2108, Mar. 5, 1963]

§ 765.5 Access to vessels or sites at which naval vessels are under construction, conversion, repair, or overhaul.

(a) No person shall be allowed to go on board vessels of the Navy under construction, conversion, repair, or overhaul except on the authority of the Commander, Naval Ship Systems Command, or his field representative assigned supervision of the construction, conversion, repair, or overhaul of the vessel.

(b) No person shall be allowed at the construction, conversion, repair, or overhaul sites and areas adjacent thereto as specifically designated, including shops within naval or commercial shipyards, repair facilities, docks, or piers, except on authority of the Commander, Naval Ship Systems Command, or his field representative assigned supervision of the construction, conversion, repair, or overhaul.

(c) No person not known to be an American citizen of good standing and repute shall be eligible for access as provided by paragraphs (a) and (b) of this section, except upon a finding by the Commander, Naval Ship Systems Command, that such access should be permitted in the best interest of the United States. Upon reaching such a finding, the conditions and controls imposed by the Commander, Naval Ship Systems Command, shall be complied with, and noncompliance serves

to cancel an authorization previously granted.

(d) Violation of the regulations set forth in paragraphs (a), (b), and (c) of this section, promulgated pursuant to law, is punishable by a fine of not to exceed $5,000 or imprisonment for not more than 1 year, or both.

(Sec. 21, 64 Stat. 1005, 50 U.S.C. 797; 19 FR 5446)

[31 FR 16620, Dec. 29, 1966]

§ 765.6 Regulations for Pearl Harbor, Hawaii.

The Commander, U.S. Naval Base, Pearl Harbor, Hawaii, is responsible for prescribing and enforcing such rules and regulations as may be necessary for insuring security and for governing the navigation, movements, and anchorage of vessels in the waters of Pearl Harbor and in the entrance channel thereto.

(Sec. 1, 37 Stat. 341, 62 Stat. 799; 18 U.S.C. 2152, 33 U.S.C. 475; E.O. 8143, 4 FR 2179, 3 CFR 1943 Cum. Supp. 504)

[31 FR 16620, Dec. 29, 1966]

§§ 765.9—765.11 [Reserved]

§ 765.12 Navy and Marine Corps absentees; rewards.

The following is set forth as it applies to Navy and Marine Corps absentees. The term "absentee," as used in this section, refers to a service member who commits the offense of absence without leave. Cf. article 86 of the Uniform Code of Military Justice (10 U.S.C. 886).

(a) *Payment of rewards*—(1) *Authority.* When authorized by military officials of the Armed Forces, any civil officer having authority to arrest offenders may apprehend an individual absent without leave from the military service of the United States and deliver him into custody of the military authorities. The receipt of Absentee Wanted by the Armed Forces (DD Form 553) or oral or written notification from military officials or Federal law enforcement officials that the person is absent and that his return to military control is desired is authority for apprehension and will be considered as an offer of a reward. When such a reward has been offered, persons or agency representatives (except salaried officers or employees of the Federal Government, or service members) apprehending or delivering absentees or deserters to military control will be entitled to a payment of

(i) $15 for the apprehension and detention until military authorities assume control, or

(ii) $25 for the apprehension and delivery to military control.

Payment of reward will be made to the person or agency representative actually making the arrest and the turnover or delivery to military control. If two or more persons or agencies join in performing these services, payment will be made only to the apprehending person or agency. Payment of a reward is authorized whether the absentee or deserter voluntarily surrenders to civil authorities or is apprehended. Payment is not authorized for information merely leading to the apprehension of an absentee or deserter.

(2) *Payment procedure.* The disbursing officer, special disbursing agent or agent officer of the military activity to which an absentee or deserter is first delivered will be responsible for payment of the reward. Payment of rewards will be made on Standard Form 1034 supported by a copy of DD Form 553 or other form or notification that an individual is absent and that his return to military control is desired, and a statement signed by the claimant specifying that he apprehended (or accepted voluntary surrender) and detained the absentee or deserter until military authorities assumed control, or that he apprehended (or accepted voluntary surrender) and delivered the absentee or deserter to military control. If oral notification was made in lieu of written notification, the claimant will so certify and provide the date of notification and the name, rank or rate, title, and organization of the person who made the authorized notice of reward for apprehension of the absentee or deserter.

(b) *Reimbursement for actual expenses*—(1) *Authority.* When a reward has not been offered or when conditions for payment of a reward otherwise cannot be met, reimbursement, not to exceed $25, may be made to any

person or agency for actual expenses incurred in the apprehension and detention or delivery to military control of an absentee or deserter. If two or more persons or agencies join in performing these services, payment may be made jointly or severally, but the total payment or payments may not exceed $25. Reimbursement may not be made for the same apprehension and detention or delivery for which a reward has been paid. Actual expenses for which reimbursement may be made include:

(i) Transportation costs, including mileage at the rate of $0.07 per mile for travel by privately owned vehicle, for a round trip from either the place of apprehension or civil police headquarters to place of return to military control;

(ii) Meals furnished the service member for which the cost was assumed by the apprehending person or agency representative;

(iii) Telephone or telegraph communication costs;

(iv) Damages to property of the apprehending person or agency if caused directly by the service member during the apprehension, detention, or delivery;

(v) Such other reasonable and necessary expenses incurred in the actual apprehension, detention, or delivery as may be considered justifiable and reimbursable by the commanding officer. Reimbursement will not be made for:

(i) Lodging at nonmilitary confinement facilities;

(ii) Transportation performed by the use of official Federal, State, county, or municipal vehicles;

(iii) Personal services of the apprehending, detaining, or delivering person or agency.

(2) *Payment procedure.* The disbursing officer or special disbursing agent of the military activity to which an absentee or deserter is first delivered will be responsible for making reimbursement for actual expenses. Reimbursement will be effected on Standard Form 1034 supported by an itemized statement in triplicate signed by the claimant and approved by the commanding officer.

(c) *Reimbursement for subsistence furnished*—(1) *Authority.* Civil authorities may be reimbursed for the cost of subsistence furnished absentees or deserters placed in their custody for safekeeping at the request of military authorities. Such reimbursement will be in addition to rewards and reimbursement for actual expenses authorized in paragraphs (a) and (b) of this section.

(2) *Payment procedure.* The disbursing officer or special disbursing agent of the military activity requesting the safekeeping confinement will be responsible for making reimbursement for subsistence furnished by civil authorities. Reimbursement will be effected on Standard Form 1034 supported by an itemized statement signed by the claimant and approved by the officer who requested the confinement.

(d) Nothing said in this section shall be construed to restrict or exclude authority to apprehend an offender in accordance with law.

(Sec. 807, 70A Stat. 39; 10 U.S.C. 807. Interpret or apply secs. 808, 7214, 70A Stat. 40, 445; 10 U.S.C. 808, 7214)

[25 FR 1075, Feb. 6, 1960]

§ 765.13 Insignia to be worn on uniform by persons not in the service.

(a) Under Title 10, United States Code, section 773, members of military societies composed of persons discharged honorably or under honorable conditions from the United States Army, Navy, Air Force or Marine Corps, regular or reserve, may, when authorized by regulations prescribed by the President, wear the uniform duly prescribed by such societies to be worn by the members thereof.

(b) The law cited in paragraph (a) of this section further provides that instructors and members of duly organized cadet corps at certain institutions of learning may wear the uniform duly prescribed by the authorities of such institutions.

(c) The law cited in paragraph (a) of this section further provides that the uniform worn by members of the military societies or by members and instructors of the cadet corps referred to in paragraph (a) of this section shall

include some distinctive mark or insignia prescribed by the Secretary of the military department concerned to distinguish such uniforms from the uniforms of the Army, Navy, Air Force, or Marine Corps.

(d) Accordingly, except as otherwise provided in this paragraph, the following mark is hereby designated to be worn by all persons wearing the Navy or Marine Corps uniform as provided in paragraphs (a), (b), and (c) of this section: A diamond, 3½ inches long in the vertical axis, and 2 inches wide in the horizontal axis, of any cloth material, white on blue clothing, forestry green on khaki clothing, and blue on white clothing. The figure shall be worn on all outer clothing on the right sleeve, at the point of the shoulder, the upper tip of the diamond to be one-fourth inch below the shoulder seam. For persons who are participating in United States Marine Corps Junior ROTC programs, the following mark is designated to be worn: A round patch, three inches in diameter, which contains a gold Marine Corps emblem centered on a scarlet field. The scarlet field is surrounded with a blue border containing the words "United States Marine Corps Junior ROTC" in white lettering. Surrounding the blue field will be a gold border. Unless otherwise directed, the patch will be worn in the manner described above in connection with the "diamond" insignia.

(e) Within the meaning of paragraph (a) of this section, the occasions when members of the military societies may wear the uniform of their respective society are official functions which such a member attends in his capacity as a war veteran or as a member of such military society.

(f) Marine Corps Uniform Regulations may be examined and individual copies of pertinent provisions thereof may be purchased in accordance with § 701.1 of this chapter.

(Sec. 773, 70A Stat. 35; 10 U.S.C. 773)

[13 FR 8971, Dec. 28, 1948, as amended at 26 FR 11794, Dec. 12, 1961; 37 FR 6472, Mar. 30, 1972; 44 FR 37610, June 28, 1979]

PART 766—USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY CIVIL AIRCRAFT

Sec.

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AUTHORITY: 10 U.S.C. 1507.

SOURCE: 35 FR 14451, Sept. 15, 1970, unless otherwise noted.

NOTE: The provisions of this Part 766 are SECNAV Instruction 3770.1B of 30 June 1970.

§ 766.1 Purpose.

This part establishes the policy and procedures for the use of Navy and Marine Corps aviation facilities by aircraft other than U.S. Department of Defense aircraft.

§ 766.2 Definition of terms.

For the purpose of this part certain terms are defined as follows:

(a) *Alternate use.* Use of the aviation facility, specified in the flight plan, to which an aircraft may divert when a landing at the point of first intended landing becomes impractical because of weather. (Aircraft may not be dispatched, prior to takeoff from the airport of origin, to a facility licensed for alternate use.)

(b) *Civil aircraft.* Domestic or foreign aircraft operated by private individuals or corporations, or foreign government-owned aircraft operated for commercial purposes. This includes:

(1) *Contract aircraft.* Civil aircraft operated under charter or other con-

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tract to any U.S. Government department or agency.

(2) *Leased aircraft.* U.S. Government-owned aircraft delivered by the Government to a lessee subject to terms prescribed in an agreement which does not limit the lessee's use of the aircraft to Government business.

(c) *Civil aviation.* All flying activity by civil aircraft including:

(1) *Commercial aviation.* Transportation by aircraft of passengers or cargo for hire and the ferrying of aircraft as a commercial venture.

(2) *General aviation.* All types of civil aviation other than commercial aviation as defined above.

(d) *Facility.* A separately located and officially defined area of real property in which the Navy exercises a real property interest and which has been designated as a Navy or Marine Corps aviation facility by cognizant authority; or where the Department of the Navy has jurisdiction over real property agreements, expressed or implied, with foreign governments, or by rights of occupation. (This definition does not include aircraft carriers nor any other type of naval vessel with a landing area for aircraft.)

(e) *Government aircraft.* Aircraft owned or operated by any department or agency of either the United States or a foreign government (except a foreign government-owned aircraft operated for commercial purposes). Also aircraft owned by any department, agency, or political subdivision of a State, territory, or possession of the United States when such local government has sole responsibility for operating the aircraft. Government aircraft includes:

(1) *Military aircraft.* Aircraft used in the military services of any government.

(2) *Bailed aircraft.* U.S. Government-owned aircraft delivered by the Government to a Government contractor for a specific purpose directly related to a Government contract.

(3) *Loaned aircraft.* U.S. Government-owned aircraft delivered gratuitously by any Department of Defense agency to another Government agency, to a U.S. Navy or Marine Corps Flying Club, or to a U.S. Army or Air Force Aero Club.

(f) *Joint-use facility.* A Navy or Marine Corps facility where a specific agreement between the Department of the Navy and a civilian community, or between the U.S. Government and a foreign government, provides for civil aircraft use of the runways and taxiways. Civil aircraft terminal, parking, and servicing facilities are established and controlled by civil authorities in an area separate from those of the Navy or Marine Corps.

(g) *Official business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government organizations or personnel at or near the naval aviation facility concerned. Use of a facility to solicit U.S. Government business is not "official business."

(h) *Provisional use.* Use of a naval aviation facility for the purpose of providing adequate service to a community where, because of repair, construction or the performance of other work, the regular civil airport servicing the community is not available for an extended period. (An aircraft may be dispatched prior to takeoff from the airport of origin to a naval aviation facility authorized for provisional use.)

(i) *Scheduled use.* Use of a facility on a scheduled or regularly recurring basis by an air carrier certified by the Civil Aeronautics Board to provide passenger and cargo service to a community or area.

(j) *Services in connection with Government contracts.* This type of operation, cited on the Aviation Facility License, indicates the use of a facility for transporting the contractor's supplies and personnel for the performance of work at the facility under the terms of a specific U.S. Government contract.

(k) *Technical stop.* An en route landing for the purpose of obtaining fuel, oil, minor repairs, or crew rest. This does not include passenger accommodations nor passenger/cargo enplaning or deplaning privileges unless specifically authorized by the Chief of Naval Operations.

(l) *User.* An individual, corporation, or company named in the Aviation Fa-

cility License and the Certificate of Insurance.

§ 766.3 Authority.

Section 1107(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1507, 1508) states that "Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other agency having jurisdiction thereof deems advisable and may by regulation prescribe." (See § 766.13 for restrictions imposed by the Federal Aviation Act of 1958.)

§ 766.4 Policy.

Navy and Marine Corps aviation facilities are established to support the operation of Navy and Marine Corps aircraft. Equipment, personnel and material are maintained only at a level necessitated by these requirements and shall not be used to support the operation or maintenance of civil aircraft or non U.S. Government aircraft, except as noted below. (Nothing in this part, however, should be interpreted to prohibit any aircraft from landing at any suitable Navy or Marine Corps aviation facility in case of a bona fide emergency.) (See § 766.5(i).)

(a) *General.* Subject to the procedures established elsewhere in this part, civil aircraft and government aircraft, other than those belonging to the U.S. Government may use Navy or Marine Corps facilities, if necessary, *Provided,* That:

(1) They do not interfere with military requirements, and the security of military operations, facilities, or equipment is not compromised.

(2) No adequate civil airport is available. (Exception to this provision may be made when the aircraft is operated in connection with official business as defined in this part.)

(3) Pilots comply with regulations promulgated by the cognizant military agency and the commanding officer of the facility.

(4) Civil aircraft users assume the risk in accordance with the provisions of the Aviation Facility License.

(5) Each aircraft is equipped with two-way radio which provides a capability for voice communications with the control tower on standard Navy/Marine Corps frequencies.

(6) The user, or requesting government, has obtained permission through diplomatic channels from the host country wherein the facility of intended landing is located, if applicable.

(b) *Civil Aircraft owned and operated by*—(1) *Military Personnel.* Private aircraft owned and operated by active duty U.S. military personnel or by Navy/Marine Corps Reservists on inactive duty may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Under no conditions shall such aircraft be allowed to base or operate from a facility for personal convenience nor base at a facility under the guise of official business.

(2) *Civil employees of the U.S. Government.* Private aircraft owned and operated by civil employees of the U.S. Government may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Such aircraft shall not be allowed to base or operate from a facility for personal convenience. (Employees of U.S. Government contractors are not considered civil employees of the U.S. Government.)

(3) *Non-U.S. Government personnel.* An individual or corporation owned and/or operated aircraft may be authorized to land at a facility for:

(i) Sales or service representation to authorized military agents (e.g. the exchange, commissary, or contracting officer).

(ii) Services in connection with U.S. Government contracts. Contracting agency and contract number(s) must be cited in the application for an Aviation Facility License.

(c) *Department of defense charter or contract.* Aircraft operating under a Military Traffic Management and Terminal Service (MTMTS), Military Airlift Command (MAC), or Navy charter or contract for the movement of DOD passengers or cargo may be authorized to use Navy or Marine Corps aviation

facilities when required for loading, en route or terminal stops.

(d) *Test and experimental use.* Aircraft being produced for a military agency under contract may use Navy/Marine Corps facilities for testing and experimental purposes, if the contract so provides, or if it is determined to be in the best interests of the U.S. Government to do so. Unless otherwise provided in the contract, an Aviation Facility License is required, and the user shall furnish a Certificate of Insurance as provided in this part.

(e) *Aircraft demonstrations.* Manufacturers of aircraft or installed equipment may be authorized to use Navy/Marine Corps facilities in demonstrating and/or showing aircraft or installed equipment to officials of the U.S. Government when:

(1) It is determined to be in the best interest of the U.S. Government.

(2) The aircraft was produced in accordance with U.S. Government specifications either with or without the aid of Federal funds.

(3) There is an expressed interest on the part of the U.S. Government officials responsible for procurement, approval, or certification of the aircraft.

(f) *Joint use.* When a specific agreement is entered into by the Department of the Navy pertaining to joint civil/military use of a Navy or Marine Corps facility, the terms of that agreement shall take precedence over the provisions of this part.

(g) *Diplomatic agreements.* For diplomatic agreements and clearances to use U.S. Navy and Marine Corps aviation facilities in foreign countries, the provisions of this part are subject to the provisions of status of forces agreements, treaties of mutual cooperation or other international agreements. This part shall be used as a guide in negotiating agreements at the local level with representatives of a foreign military service, the U.S. Embassy, and the host government concerning the use of naval facilities by other than U.S. military aircraft. Approval shall be obtained from the Chief of Naval Operations for proposed terms which are in conflict with this part.

§ 766.5 Conditions governing use of aviation facilities by civil aircraft.

(a) *Risk.* The use of Navy or Marine Corps aviation facilities by civil aircraft shall be at the risk of the operator. Except as hereinafter provided for U.S. Government contractors, the Department of the Navy shall assume no liability or responsibility by reason of the condition of the landing area, taxiways, radio and navigational aids, or other equipment or for notification of such condition; or by the acts of its agents in connection with the granting of the right to use such naval facility. No responsibility is assumed for the security of or damage to aircraft while on property owned or controlled by the U.S. Government.

(b) *Military rules.* Operators of civil aircraft utilizing a Navy or Marine Corps aviation facility shall be required to comply with the air and ground rules promulgated by the Department of the Navy and the commanding officer of the aviation facility. Such compliance shall pertain specifically to clearance authorization for the entry, departure, or movement of aircraft within the confines of the terminal area normally controlled by the commanding officer of the aviation facility.

(c) *Federal aviation regulations.* Operators of civil aircraft shall be required to comply with all Federal Aviation Administration (FAA) rules and regulations including filing of flight plans. When such flight plans are required, they shall be filed with the commanding officer or his authorized representative prior to the departure of the aircraft. When such a flight plan is not required, a list of passengers and crew members, the airport of first intended landing, the alternate airport, and fuel supply in hours shall be placed on file prior to takeoff, with the commanding officer or with the local company representative as appropriate.

(d) *Hours of operation.* The use of a Navy/Marine Corps aviation facility by civil aircraft shall be limited to the hours when the facility is normally in operation.

(e) *Weather minimums.* Civil aircraft shall comply with weather minimums as follows:

(1) Visual Flight Operations shall be conducted in accordance with Federal Aviation Regulations (FAR), § 91.105 of this title. If more stringent visual flight rules minimums have been established for the point of departure or destination, as noted in the aerodrome remarks section of the Department of Defense Flight Information Publication (en Route) Instrument Flight Rules—Supplement, then the ceiling and visibility must be at or above these minimums in the applicable control zone.

(2) Instrument flight operations shall be conducted in accordance with FAR, § 91.116 of this title.

(f) *Inspection.* The commanding officer may conduct such inspection of a transiting civil aircraft and its crew, passengers and cargo as he may consider appropriate or necessary to the carrying out of his duties and responsibilities.

(g) *Customs, immigration, agriculture, and public health inspection.* (1) The civil aircraft commander shall be responsible for compliance with all applicable customs, immigration, agriculture, and public health laws and regulations. He shall also be responsible for paying fees, charges for overtime services, and for all other costs connected with the administration of such laws and regulations.

(2) The commanding officer of the Navy/Marine Corps aviation facility will inform the appropriate public officials of the arrival of civil aircraft subject to such laws and regulations. He will not issue clearances for a civil aircraft to takeoff until such laws and regulations have been complied with. Procedures for insuring compliance with such laws and regulations shall be as mutually agreed to by the commanding officer of the aviation facility and the local public officials.

(h) *Weather alternate.* If a Navy/Marine Corps aviation facility has been approved for use as an alternate airport, radio clearance must be obtained from such facility as soon as the decision is made en route for such use.

(i) *Emergency landings.* Any aircraft may land at a Navy/Marine Corps aviation facility when necessary as a result of a bona fide emergency. However, whenever the nature of the emergency permits the pilot to select the time and place of landing, it is preferred that the pilot land his aircraft at a civil field.

(1) *Report.* After an emergency landing the pilot will be requested to file with the commanding officer of the facility a complete narrative report of the circumstances pertaining to the emergency. If such a report cannot be obtained, the commanding officer will prepare a report using the facts available to him. The report shall be submitted to the appropriate Federal Aviation Administration General Aviation District Office, if the facility is within the United States, its territories, or possessions. If the facility is located in a foreign country, the report shall be submitted to the U.S. naval attache. A copy of the report shall be forwarded to the Chief of Naval Operations (OP-53).

(2) The commanding officer of the aviation facility will require that the pilot of the aircraft pay all fees and charges and execute the Aviation Facility License. A statement explaining the circumstances of the emergency landing must be noted in § 766.5 of the license application. If a narrative report from the pilot is available, it may be attached to the application.

(3) *Clearance of runway.* The Department of the Navy reserves the right to use any method to clear a runway of aircraft or wreckage consistent with operational requirements. Care will be exercised to preclude unnecessary damage in removing wrecked aircraft; however, the Navy assumes no liability as a result of such removal.

(4) *Repairs.* (i) Aircraft requiring major repairs may be stored temporarily in damaged condition. If repairs cannot be completed within a reasonable time, the aircraft must be removed from the facility by the owner or operator of the aircraft without delay.

(ii) No aircraft will be given a major or minor overhaul.

(iii) Engine or air frame minor components may be furnished, when not available through commercial sources, provided such supplies can be spared and are not known to be in short supply. The issuance of such supplies must be approved by the commanding officer.

(iv) Minor components in short supply or major components for which there is a repeated demand can be furnished only on message authority obtained from the Aviation Supply Office, Philadelphia, Pa. (for continental facilities) or local fleet air command or major aviation supply depot (for extracontinental facilities). Complete engines, airplane wings, or other major items of equipment shall not be furnished under this authority.

(v) If the commanding officer believes it is desirable to furnish requested material or services in excess of the restrictions stated herein, he shall request instructions from the Chief of Naval Operations, giving a brief description of the material or services requested together with his recommendations.

(5) *Reimbursement for costs.* (i) The civil user making an emergency landing will be billed in accordance with paragraphs 032500-032503 of the NAVCOMPT Manual and paragraphs 25345-25363 of the NAVSUP Manual for payment of all costs incurred by the Government as a direct result of the emergency landing. Such costs will include those associated with labor, material, rental of equipment, vehicles or tools, etc., for:

(*a*) Spreading foam on runway before the aircraft attempts emergency landing.

(*b*) Fire and crash control and rescue.

(*c*) Movement and storage of aircraft or wreckage.

(*d*) Damage to runway, lights, navigation aids, etc.

(ii) There will be no charge for naval meteorological services and naval communications facilities for the handling of arrival and departure reports, air traffic control messages, position reports and safety messages.

(iii) The determination as to whether landing fees shall be charged pursuant to an emergency landing for maintenance or repair shall be the prerogative of the commanding officer of the facility.

§ 766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.

(a) Except as indicated in paragraphs (b) and (c) of this section, the commanding officer of an active Navy/Marine Corps aviation facility may approve or disapprove landings of civil aircraft at his facility when such landing is:

(1) Directly connected with or in support of U.S. Government business (except those listed in paragraph (c) of this section).

(2) In connection with U.S. Government or community interests on an infrequent basis when no adequate civil airport is reasonably available.

(3) By aircraft owned and operated by Navy/Marine Corps Flying Clubs or U.S. Army or Air Force Aero Clubs which are operated as instrumentalities of the U.S. Government.

(4) By aircraft owned and operated by U.S. Government personnel when such use is in accordance with § 766.4(b) (1) and (2).

(5) By civil aircraft either owned or personally chartered by:

(i) The President or Vice President of the United States or a past President of the United States.

(ii) The head of any Federal department or agency.

(iii) A Member of Congress.

(6) By a bailed, leased, or loaned aircraft (as defined in § 766.2) when operated in connection with official business only.

(7) By aircraft owned and operated by States, counties, or municipalities of the United States when used for official business of the owner.

(b) Except as limited by paragraph (c) of this section, the Commander in Chief, U.S. Naval Forces, Europe; Chief of Naval Material; Commander in Chief, U.S. Atlantic Fleet; Commander in Chief, U.S. Pacific Fleet; Chief of Naval Air Training; Commander, Pacific Missile Range; Commander, Marine Corps Air Bases, Eastern Area; Commander, Marine Corps Air Bases, Western Area; and Com-

manding General, Fleet Marine Force, Pacific may approve civil aircraft use of any active aviation facility under their control. (At overseas locations, aircraft landing authorizations must be in consonance with the provisions of applicable international agreements.)

(c) The Chief of Naval Operations may approve any of the above requests, and is the only agency empowered to approve all other requests for use of naval facilities by civil and government aircraft, for example:

(1) Applications for use of more than one facility when the facilities are not under the control of one major command.

(2) Application for use of naval aviation facilities when participating in U.S. Government or Department of Defense single-manager contract and charter airlift operations; i.e., Military Airlift Command (MAC) or Military Traffic Management and Terminal Service (MTMTS).

(3) Application for a facility to be used as a regular civil airfield for a community, by either commercial or general aviation.

(4) Requests for use of a facility by foreign civil or government aircraft when:

(i) Such use is not covered by an agreement between the U.S. Government and the government of the aircraft's registry, or

(ii) The facility is located in a country other than that in which the foreign aircraft is registered.

§ 766.7 How to request use of naval aviation facilities.

(a) *Forms required.* Each applicant desiring use of a Navy/Marine Corps aviation facility will be required to:

(1) Execute an application for an Aviation Facility License (OPNAV Form 3770/1 (Rev. 7-70)).

(2) Submit a Certificate of Insurance (NAVFAC 7-11011/36) showing coverage as provided by § 766.9 of this part.

(b) *Exceptions.* Exceptions to the foregoing requirements are:

(1) Aircraft owned and operated by departments or agencies of the U.S. Government for official business.

(2) Aircraft owned and operated or noncommercial purposes by agencies of a foreign government, except in cases where the foreign government charges fees for U.S. Government aircraft.

(3) Aircraft owned and operated by States, possessions, and territories of the United States and political subdivisions, thereof, when used for official business of the owner.

(4) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs of other military services which are operated as instrumentalities of the U.S. Government.

(5) Bailed aircraft, provided the bailment contract specifies that the U.S. Government is the insurer for liability.

(c) *Obtaining forms.* The applicant may obtain the required forms listed in paragraph (a) of this section, from the commanding officer of any Navy or Marine Corps aviation facility or from the Chief of Naval Operations (OP-53C). Navy units may obtain the forms through regular supply channels as a Cog "I" item.

(d) *Preparation of forms.* (1) The license application will be completed in quadruplicate by the applicant in accordance with detailed instructions set forth in Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)).

(2) The Certificate of Insurance will be completed by the insurer. Only the signed original certificate and one copy are required to be submitted.

(e) *Submission of forms.* (1) The forms executed by the applicant shall be submitted to the commanding officer of the aviation facility concerned, except that applications requiring approval by higher authority shall be submitted to the appropriate approving authority, as indicated in paragraph (b) or (c) of this section at least 30 days prior to the first intended landing.

(2) Once the NAVFAC 7-11011/36, Certificate of Insurance, is on file with an executing authority, it is valid until insurance expiration date and may be used by that executing authority as a basis for his action on any subsequent OPNAV Forms 3770/1 submitted for approval.

(f) *Security deposit.* All applications, other than those listed in § 766.11(a) contemplating more than one landing

per month, will be accompanied by a security deposit in the form of a certified check payable to the "Treasurer of the United States" in payment of the estimated costs of landing, hangar and outside parking fees, for 3 months in advance, calculated as provided in § 766.11 (c) and (d). Security deposits will be handled as set forth in paragraph 032102 of the NAVCOMPT Manual.

(g) *Nonexclusive use airports.* When either the Chief of Naval Operations or Commandant of the U.S. Marine Corps does not have exclusive operational control over a landing area, the aircraft operator will obtain permission to land from the appropriate civil or military authority.

§ 766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.

(a) *Review of application by the commanding officer.* The commanding officer will review each application for Aviation Facility License and Certificate of Insurance received and determine whether such forms have been completed by the applicant in accordance with the instructions for their preparation as indicated in the Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)) and the Certificate of Insurance (NAVFAC 7-11011/36(7-70)). As appropriate, the commanding officer will require each applicant to furnish a security deposit as stipulated in § 766.7(f).

(b) *Processing application.* The commanding officer will approve/disapprove the application or forward it to higher authority for approval as required by § 766.6(b) or (c). If the application is approved, the approving authority will then forward all copies of the license and Certificate of Insurance to the Commander, Naval Facilities Engineering Command or his designated representative for review and execution of the license.

(c) *Action by the Commander, Naval Facilities Engineering Command or his designated representative.* (1) Upon receipt, the Commander, Naval Facilities Engineering Command, or his designated representative, will review the license and Certificate of Insurance. He shall determine whether the insurance coverage conforms to the requirements prescribed by § 766.9 of this part or to such requirements as may be promulgated from time to time by the Chief of Naval Material.

(2) Upon approval, he will then execute the license in triplicate, conform all additional copies, and make distribution as provided in paragraph (d) of this section. Applications which are not approved will be returned to the applicant with an explanation of deficiencies which must be corrected prior to execution.

(d) *Distribution.* (1) After execution of a license, distribution will be made as follows:

Original—To the licensee.

Executed copy—To the commanding officer.

Executed copy—To the Commander, Naval Facilities Engineering Command or his designated representative.

Conformed copy—To the Chief of Naval Operations (OP-53).

Conformed copy—To the cognizant commander under § 766.6(b).

Conformed copy—To the disbursing officer serving the performing activity in the case of local deposits, and to the Office of the Navy Comptroller (NAFC3) in the case of central deposits held at the Washington, D.C. level.

Conformed copy—To the Military Airlift Command (MAC) for DOD contract or charter airlift operations.

Conformed copy—To the Military Traffic Management and Terminal Service (MTMTS) for DOD contract or charter airlift operations.

(2) Licenses issued under this authority are to be disposed of under provisions of paragraph 4280 of SECNAVINST 5212.5B, Disposal of Navy and Marine Corps Records. In accordance therewith, official executed copies of licenses are to be retained for a period of 6 years after completion or termination of the agreement. They may be transferred to the nearest Federal records center when superseded, revoked, canceled, or expired for retention by the center until expiration of the 6-year retention period.

§ 766.9 Insurance requirements.

(a) *Control of insurance.* The Commander, Naval Facilities Engineering Command, or his designee, shall be responsible for requiring aircraft owners

or operators to procure and maintain liability insurance conforming to the standards prescribed by the Chief of Naval Material. The insurance policy must be obtained at the expense of the civil aircraft owner or operator and with a company acceptable to the U.S. Navy.

(b) *Insurance coverage.* Except for those aircraft exempted by paragraph (c) below, each civil aircraft is required to be covered by insurance of the types and minimum limits established by the Chief of Naval Material. The Certificate of Insurance, must state all coverages in U.S. dollars. Current minimums are:

(1) Privately owned commercially-operated aircraft used for cargo carrying only and aircraft being flight-tested or ferried without passengers will be insured for:

(i) *Bodily injury liability.* At least $100,000 for each person in any one accident with at least $1 million for each accident.

(ii) *Property damage liability.* At least $1 million for each accident.

(2) Privately owned commercially-operated aircraft used for passenger carrying and privately owned noncommercially-operated aircraft of 12,500 pounds or more certified maximum gross takeoff weight will be insured for:

(i) *Bodily injury liability (excluding passengers).* At least $100,000 for each person in any one accident with at least $1 million for each accident.

(ii) *Property damage liability.* At least $1 million for each accident.

(iii) *Passenger liability.* At least $100,000 for each passenger, with a minimum for each accident determined as follows: multiply the minimum for each passenger, $100,000 by the next highest whole number resulting from taking 75 percent of the total number of passenger seats (exclusive of crew seats). For example: The minimum passenger coverage for each accident for an aircraft with 94 passenger seats is computed: $94 \times 0.75 = 70.5$—next highest whole number resulting in 71. Therefore, $71 \times \$100,000 = \$7,100,000$.

(3) Privately owned noncommercially-operated aircraft of less than 12,500 pounds will be insured for:

(i) *Bodily injury liability (excluding passengers).* At least $100,000 for each person in any one accident with at least $500,000 for each accident.

(ii) *Property damage liability.* At least $500,000 for each accident.

(iii) *Passenger liability.* At least $100,000 for each passenger, with a minimum for each accident determined by multiplying the minimum for each passenger, $100,000 by the total number of passenger seats (exclusive of crew seats).

(4) Aircraft insured for a single limit of liability must have coverage equal to or greater than the combined required minimums for bodily injury, property damage, and passenger liability for the type of use requested and for the passenger capacity and gross takeoff weight of the aircraft being operated. For example: the minimum single limit of liability acceptable for an aircraft operating as described in paragraph (b)(2) of this section is $\$1,000,000 + \$1,000,000 + \$7,100,000 = \$9,100,000$.

(5) Aircraft insured by a combination of primary and excess policies must have combined coverage equal to or greater than the required minimums for bodily injury, property damage, and passenger liability, for the type of use, and for the passenger capacity and gross takeoff weight of the aircraft.

(6) Each policy must specifically provide that:

(i) The insurer waives any right to subrogation the insurer may have against the United States by reason of any payment under the policy for damage or injury which might arise out of or in connection with the insured's use of any Navy installation or facility.

(ii) The insurance afforded by the policy applies to the liability assumed by the insured under OPNAV Form 3770/1, Aviation Facility License.

(iii) If the insurer cancels or reduces the amount of insurance afforded under the listed policy, the insurer shall send written notice of the cancellation or reduction to Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, D.C. 20390 by registered mail at least 30 days in advance of the ef-

fective date of the cancellation; the policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent, regardless of the effective date specified therein.

(iv) If the insured requests cancellation or reduction, the insurer shall notify the Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, D.C. 20390 immediately upon receipt of such request.

(c) *Exemption.* Government aircraft, as defined in § 766.2(e) are exempt from the insurance requirements specified above. However, this exemption applies to bailed aircraft only if the contract under which the aircraft is bailed specifies that insurance is not required.

§ 766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).

(a) *Cancellation.* (1) If the user fails to comply with the terms of the Aviation Facility License (OPNAV Form 3770/1) or of any applicable regulations, all current Aviation Facility Licenses for that user will be canceled. A canceled Aviation Facility License cannot be reinstated; a new application must be submitted for approval as explained in § 766.7.

(2) If the commanding officer of a naval aviation facility has reason to believe that the use of an Aviation Facility License is not in accordance with the terms of the license he should immediately notify the Chief of Naval Operations, giving the name of the user, the Aviation Facility License number, and citing the circumstances of the misuse.

(b) *Suspension.* The approving authority, or the commanding officer of the facility, may suspend an approved Aviation Facility License when such licensed use would be inconsistent with Navy/Marine Corps or national defense interests. Whenever possible, the Department of the Navy will avoid suspension of licenses which have been issued for official business or scheduled air carrier use. In all cases, suspensions will be lifted as quickly as possible. A suspension will not have the effect of extending the expiration date of an approved Aviation Facility License.

§ 766.11 Fees for landing, parking and storage.

(a) The commanding officer of a facility will collect landing, parking, and storage fees, as applicable, from all users required to have an Aviation Facility License by § 766.7 except for the following:

(1) Government aircraft (see definition § 766.2(g)) except that foreign government aircraft will be charged fees if their government charges similar fees for U.S. Government aircraft.

(2) Aircraft being produced under a contract of the U.S. Government.

(3) Any contract aircraft (see definition § 766.2(b)(1)) or other civil aircraft which is authorized to use the facility on official business.

(4) Aircraft employed to train operators in the use of precision approach systems (GCA, ILS, et al.) provided full-stop or touch-and-go landings are not performed.

(5) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs or other military services which are operated as instrumentalities of the U.S. Government.

(6) Aircraft owned and operated by military personnel on active duty (Regular and Reserve) or retired, provided the aircraft is not used for commercial purposes.

(7) Landing fees incident to emergency landings for which the landing fee has been waived by the commanding officer in accordance with § 766.5(i)(5)(i).

(b) *Fee for unauthorized landing.* If an aircraft lands at a Navy/Marine Corps aviation facility without obtaining prior permission (except for a bona fide emergency landing), a landing fee in excess of the normal landing fee will be charged to cover the additional expenses incurred due to special handling and processing. The fee for an unathorized landing will be as follows:

(1) For aircraft weighing less than 12,500 pounds: $100.

(2) For aircraft weighing 12,500 pounds but less than 40,000 pounds: $250.

(3) For aircraft weighing 40,000 pounds but less than 100,000 pounds: $500.

(4) For aircraft weighing above 100,000 pounds: $600.

(c) *Normal landing fee.* The normal landing fee is based on the aircraft maximum authorized gross takeoff weight, to the nearest 1,000 pounds. The maximum gross takeoff weight may be determined either from item 7F of OPNAV Form 3770/1 or from the "Airplane Flight Manual" carried aboard each aircraft. If the weight cannot be determined, it should be estimated.

CHARGE PER LANDING

Inside CONUS—0.20/1,000 pounds or any portion thereof with a minimum of $5.
Outside CONUS—0.30/1,000 pounds or any portion thereof with a minimum of $7.50.

(d) *Parking and storage fees.* Fixed and rotary wing aircraft parking and storage fees are based upon the gross takeoff weight of the aircraft as follows:

(1) *Outside a hangar.* Charges begin 6 hours after the aircraft lands. The rate is 10 cents per thousand pounds for each 24-hour period or fraction thereof, with a minimum charge of $1.50 per aircraft.

(2) *Inside a hangar.* Charges begin as soon as the aircraft is placed inside the hangar. The rate is 20 cents per 1,000 pounds for each 24-hour period or fraction thereof, with a minimum charge of $5 per aircraft.

(e) *Reimbursement.* Collections incident to direct (out of pocket) costs will be credited to local operating and maintenance funds. All other collections, such as for landing, parking, and storage fees will be credited to Navy General Fund Receipt Account 172426. Accumulation of costs and preparation of billing documents are prescribed in paragraphs 032500-032503 of the NAVCOMPT Manual.

§ 766.12 Unauthorized landings.

An aircraft that lands at a Navy/Marine Corps aviation facility without obtaining prior permission from an approving authority, except in a bona fide emergency, is in violation of this part. Civil aircraft landing in violation of this regulation will have to pay the fee prescribed in § 766.11(b). In those cases where an unauthorized landing is made at a facility within a Naval Defense Area, proclaimed as such by Executive order of the President, civil aircraft may be impounded and the operator prosecuted as indicated in OPNAVINST 5500.11C of November 12, 1963. In any event, before the aircraft is authorized to depart, the commanding officer of the facility will:

(a) Inform the aircraft operator of the provisions of this part and the OP NAVINST 5500.11C of November 12, 1963, if applicable.

(b) Require the aircraft operator (or owner), before takeoff, to pay all fees and charges and to comply with the following procedure:

(1) Execute OPNAV Form 3770/1, explaining in item 6 of that form the reason for the landing.

(2) In lieu of submitting a Certificate of Insurance (NAVFAC 7-11011/36), the insurer must furnish evidence of sufficient insurance to include waiver of any right of subrogation against the United States, and that such insurance applies to the liability assumed by the insured under OPNAV Form 3770/1.

(3) When it appears that the violation may have been deliberate, or is a repeated violation, departure authorization must be obtained from the Chief of Naval Operations.

(4) As in the case of an emergency landing, the commanding officer will report the circumstances of the unauthorized landing to the Federal Aviation Administration General Aviation District Officer or, if in a foreign country, to the U.S. naval attache.

(5) Waiver of the requirements in paragraphs (b)(1) and (2) of this section may be obtained from the Chief of Naval Operations to expedite removal of these aircraft when such waiver is considered appropriate.

§ 766.13 Sale of aviation fuel, oil, services and supplies.

(a) *General policy.* In accordance with sections 1107 and 1108 of the Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), Navy/Marine Corps Aviation fuel, oil, services, and supplies are not sold to civil aircraft in competition with pri-

vate enterprise. Sections 1107 and 1108 of Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), however, does authorize the sales of fuel, oil, equipment, supplies, mechanical service, and other assistance by reason of an emergency. Such sales will be made only where there is no commercial source and only in the amount necessary for the aircraft to continue on its course to the nearest airport operated by private enterprise.

(b) *Contract aircraft.* The sale of aviation fuel, oil, supplies, etc. to aircraft under U.S. Government contract or charter is permitted at, and limited to, points where passengers or cargo are loaded into or discharged from the aircraft under terms of the contract or charter. Sales are not authorized at naval aviation facilities where commercial supplies and service are available.

PARTS 767–769—[RESERVED]

PART 770—RULES LIMITING PUBLIC ACCESS TO PARTICULAR INSTALLATIONS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714, unless otherwise noted.

SOURCE: 41 FR 22345, June 3, 1976, unless otherwise noted.

Subpart A—Hunting and Fishing at Marine Corps Base, Quantico, Virginia

§ 770.1 Purpose.

This subpart provides regulations and related information governing hunting and fishing on the Marine Corps Base Reservation, Quantico, Virginia.

§ 770.2 Licenses.

(a) Every person who hunts or fishes on Marine Corps Base, Quantico, Virginia, must possess appropriate valid licenses in compliance with the Laws of the United States and the State of Virginia.

(b) In addition, hunting and fishing privilege cards, issued by the authorities at Marine Corps Base, Quantico, Virginia, are required for all persons between the ages sixteen and sixty-four, inclusive.

(1) The privilege card may be purchased from the Game Warden at the Natural Resources Management Division Headquarters, Building 5-9, Marine Corps Base, Quantico, Virginia.

(2) The card is effective from 1 July–30 June.

(c) All hunters must obtain a Base hunting permit, and a parking permit, if applicable, from the Game Warden for each day of hunting. The permits

must be displayed on the left dashboard of parked vehicles. The hunting and parking permits must be returned at the end of each day's hunting.

(d) Eligibility for a Base hunting permit is predicated on:

(1) Possession of required Federal and State licenses for the game to be hunted including Marine Corps Base hunting privilege card;

(2) Attendance at a safety lecture given daily except Sunday during hunting season;

(3) Understanding of Federal, State and Base hunting regulations;

(4) And, if civilian, an executed release of U.S. Government responsibility in case of accident or injury.

§ 770.3 Fishing regulations.

(a) All persons possessing the proper state license and Base permit are permitted to fish in the areas designated by the Base Game Warden on Marine Corps Base, Quantico, Virginia, on any authorized fishing day. With the exception of military personnel, active and retired and their dependents, persons from the civilian community will be limited to 100 persons per day on a first come, first served basis.

(b) Fishing is permitted on all waters within the boundaries of Marine Corps Base, Quantico, Virginia, unless otherwise posted, during the periods provided and under the conditions and restrictions, by the Marine Corps Base, Quantico, Virginia, Game Warden. Information regarding specific regulations for each fishing area must be procured from the Game Warden located in Natural Resources Management Division Headquarters prior to utilization of Base fishing facilities.

(c) In addition to the requirements of the Laws of Virginia, the following additional prohibitions and requirements are in effect at Marine Corps Base, Quantico, Virginia.

(1) Live minnows will not be used as bait in any impounded waters on the Marine Corps Base, Quantico, Virginia;

(2) No trout lines are permitted in Marine Corps Base waters;

(3) No Large Mouth Bass will be taken, creeled or possessed under the size of twelve (12) inches in length;

(4) All Large Mouth Bass under this size will be immediately returned to the water;

(5) All persons fishing in the waters of Marine Corps Base, Quantico, Virginia, will possess and utilize a creel card furnished by the Game Warden, and the creel card will be returned, accurately and completed, to the Game Warden's Office or other designated collection point at the end of each day of fishing.

§ 770.4 Hunting regulations.

All persons possessing the proper State, Federal and Base licenses and permits are permitted to hunt in the areas designated daily by the Game Warden on Marine Corps Base, Quantico, Virginia, on any authorized hunting day. In addition, a minimum of ten percent of the daily hunting spaces will be reserved to civilians on a first come, first served basis until 0600 on each hunting day, at which time, the Game Warden may fill vacancies from any authorized persons waiting to hunt.

§ 770.5 Safety regulations.

(a) Hunting is not permitted within 200 yards of the following: Ammunition dumps, built-up areas, rifle or pistol ranges, dwelling or other occupied structures, and areas designated by the Game Warden as recreation areas.

(b) From the end of the special archery season until the end of the regular winter hunting season, except for duck hunters in approved blinds, hunters will wear an outer garment with at least one square foot of blaze orange visible both front and back above the waist and a blaze orange cap while hunting, or while in the woods for any reason, during the hours that hunting is authorized. Any person traveling on foot in or adjacent to an area open for hunting will comply with the above requirement.

(c) Weapons will be unloaded while being transported in vehicles, and will be left in vehicles by personnel checking in or out at the Game Warden's Office. Weapons will not be discharged from vehicles, or within 200 yards of hard surfaced roads.

(d) Certain hunting areas contain numerous unexploded munitions (duds) which are dangerous and must not be removed or disturbed. Hunters should mark such duds with stakes or other means and report their location to the Game Warden.

(e) Hunters must stay in their assigned areas when hunting.

§ 770.6 Restrictions.

(a) There will be no hunting on Christmas Day; New Year's Day, or after 1200 on Thanksgiving Day and Christmas Eve.

(b) Hunters under 16 years of age must be accompanied by an adult while on the Marine Corps Base Reservation.

(c) The following practices or actions are expressly forbidden: Use of rifles, except muzzleloaders of .40 caliber or larger as specified below, revolvers or pistols; use of shotguns larger than 10 gauge or crossbows (this prohibition extends to carrying such weapons on the person or in a vehicle while hunting), use of buckshot to hunt any game; use of a light, attached to a vehicle or otherwise, for the purpose of spotting game; use of dogs for hunting or tracking deer; training deer dogs on the Reservation; training or running dogs in hunting areas between 1 March and 1 September; driving deer; baiting or salting traps or blinds; hunting on Sunday; molesting beaver or bald eagles.

(d) Hunting will not commence before one half hour before sunrise, and will end not later than sunset, except that dove hunting is from noon to sunset, and gobbler hunting during the spring season is limited to one half hour before sunrise until 1100.

(e) Weapons will not be loaded outside of hunting hours.

§ 770.7 Violations.

Violations of hunting regulations, fishing regulations, safety regulations, or principles of good sportsmanship are subject to administrative restriction of hunting or fishing privileges and possible judicial proceedings in State or Federal courts.

(a) The Marine Corps Base Game Warden and Wildlife Manager are commissioned as Virginia and Federal game wardens and they can issue summons to appear in civil court for violations of Federal and State game laws.

(b) Offenders in violation of a Federal or State hunting or fishing law will be referred to a civil court.

(c) Offenders in violation of a Federal, State or Base hunting or fishing law or regulation will receive the following administrative actions.

(1) The Base Game Warden or the Wildlife manager shall have the authority to temporarily suspend hunting and fishing privileges.

(2) And for the first minor offense a letter of warning will be issued.

(3) For the second minor offense hunting or fishing privileges will be revoked for one year.

(4) For the first serious offense hunting or fishing privileges will be revoked for a minimum of one year.

(5) For the second serious offense hunting or fishing privileges will be permanently revoked.

(d) Civilians found in violation of a hunting or fishing regulation or law may be permanently restricted from entering the base.

(e) Serious hunting and fishing offenses include, but are not limited to: spotlighting, false statement on a license, hunting under the influence, employment of a light in an area that deer frequent, and taking game or fish during closed seasons.

§ 770.8 Reports.

Upon killing a deer or turkey, a hunter must attach the appropriate tab from his big game license to the carcass before moving the game from the place of kill. The game will then be taken to the Game Warden's Office where the tab will be exchanged for an official game tag. All other game killed on the Reservation will be reported to the Game Warden when checking out at the end of a hunt.

§ 770.9 Miscellaneous.

Duck blinds may be placed on waters within the bounds of the Reservation when specifically authorized by the Wildlife Manager. Muzzleloading rifles .40 caliber and larger will be permitted for deer hunting during the established seasons in those numbered

hunting areas located entirely in Fauquier and Stafford Counties within the boundaries of the Marine Corps Base. Deer will only be hunted with the bow and arrow, and shotguns loaded with slugs, with exception of the preceding sentence.

Subpart B—Base Entry Regulations for Naval Submarine Base, Bangor, Bremerton, Washington

AUTHORITY: 50 U.S.C. 797; DoD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 770.15 Purpose.

The purpose of this subpart is to promulgate regulations governing entry upon Naval Submarine Base (SUBASE), Bangor.

§ 770.16 Definition.

For the purpose of this subpart, SUBASE Bangor shall include that area of land in Kitsap and Jefferson Counties, State of Washington which has been set aside for use of the Federal Government by an Act of the legislature of the State of Washington, approved March 15, 1939 (Session laws of 1939, Chapter 126).

§ 770.17 Background.

(a) SUBASE Bangor has been designated as the West Coast home port of the Trident Submarine. Facilities for the repair or overhaul of naval vessels are located at SUBASE Bangor. It is vital to national defense that the operation and use of SUBASE Bangor be continued without undue and unnecessary interruption. Many areas of SUBASE Bangor are of an industrial nature, including construction sites, where inherently dangerous conditions exist.

(b) For prevention of the interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of SUBASE Bangor, and prevention of injury to any such person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon SUBASE Bangor to authorized persons only.

§ 770.18 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Naval Submarine Base, Bangor, or remaining thereon by any person whatsoever for any purpose without the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative is prohibited. *See* 18 U.S.C. 1382; the Internal Security Act of 1950, Section 21 (50 U.S.C. 797); Department of Defense Directive 5200.8 of 20 August 1954; Chief of Naval Operations Instruction 5510.45B of 19 April 1971; Chief of Naval Operations Instruction 5511.9A of 1 October 1954.

§ 770.19 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative shall, in writing, submit a request to the Commanding Officer, SUBASE Bangor, at the following address: Commanding Officer, Naval Submarine Base, Bangor, Bremerton, Washington 98315.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of SUBASE Bangor with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.20 Violations.

(a) Any person entering or remaining on SUBASE Bangor, without the consent of the Commanding Officer, SUBASE Bangor or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined

not more than $500 or imprisoned not more than six months or both."

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $500 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart C—Base Entry Regulations for Naval Installations in the State of Hawaii

AUTHORITY: 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C 301; 10 U.S.C. 6011; 32 CFR 700.702, 770.714.

SOURCE: 44 FR 76279, Dec. 26, 1979, unless otherwise noted.

§ 770.25 Purpose.

The purpose of this subpart is to promulgate regulations governing entry to naval installations in the State of Hawaii.

§ 770.26 Definitions.

For the purpose of this subpart the following definitions apply:

(a) *Naval installations.* A naval installation is a shore activity and is any area of land, whether or not fenced or covered by water, that is administered by the Department of the Navy or by any subordinate naval command. The term "naval installation" applies to all such areas regardless of whether the areas are being used for purely military purposes, for housing, for support purposes, or for any other purpose by a naval command. Section 770.31 contains a list of the major naval installations in Hawaii. This list is not considered to be all inclusive and is included only as a representative guide. For the purposes of this subpart the area of water within Pearl Harbor is considered to be within a naval installation.

(b) *Outleased areas.* Certain portions of naval installations in Hawaii which are not for the time needed for public use or for which a dual use is feasible have been outleased to private interests. Examples of such outleased areas are the Moanalua Shopping Center and lands such as Waipio Peninsula, which has been outleased for agricultural purposes. For the purpose of this Subpart, outleased areas which are not within fenced portions of naval installations are not considered to be a part of naval installations. Rules for entry onto the outleased areas are made by the lessees, except in the case of Waipio Peninsula where the lessee (Oahu Sugar Company) is not authorized to allow anyone to enter Waipio Peninsula for any purpose not connected with sugar cane production.

§ 770.27 Background.

(a) Naval installations in Hawaii constitute a significant element of the national defense establishment. It is vital to the national defense that the use of such areas be at all times under the positive control of the Department of the Navy. Strict control must be exercised over access to naval installations in order to preclude damage accidental and intentional to Government property, injury to military personnel, and interference in the orderly accomplishment of the mission of command.

(b) There are several industrial areas within naval installations in Hawaii wherein construction activities and the use of heavy machinery pose grave risk of danger to visitors.

(c) Various types of flammable or incendiary materials and ordnance are stored at a number of locations within naval installations in Hawaii.

(d) Classified documents and equipment requiring protection from unauthorized disclosure by Executive order 12065 for reasons of national security are located at various locations within naval installations in Hawaii.

(e) In order to effect the positive control of the Navy over its installations in Hawaii, it is essential that entry onto those installations be restricted to authorized persons only.

(f) These entry regulations are being promulgated under the authority of Commander, Naval Base, Pearl Harbor, who has been assigned as immediate area coordinator for all naval installations in the State of Hawaii by Commander-in-Chief, U.S. Pacific Fleet.

§ 770.28 Entry restrictions.

Each commander is responsible for the security of his/her command. Therefore, entry onto a command or into part of a command may be controlled by the commander through the

imposition of such restrictions as may be required by attendant circumstances. Within the State of Hawaii, entry into a naval installation is not permitted without the permission of the responsible commander.

§ 770.29 Entry procedures.

(a) Operational, security, and safety considerations take priority over requests by individuals to visit a naval installation. Consistent with such considerations, visits by members of the general public may be authorized at the discretion of the commander. The commitment of resources which would be required to safeguard the persons and property of visitors as well as military property and personnel must of necessity preclude or severely restrict such visiting. The purpose and duration of the visit and the size of the party and areas to be visited are other considerations which may affect the commander's decision whether to permit visiting by members of the public.

(b) Any person or group desiring to enter a particular naval installation or portion thereof, shall submit a written request to the commander of the installation well enough in advance to allow a reasonable time for reply by mail. Mailing addresses for commanders of major installations covered by this subpart are listed in § 770.31. Full compliance with a naval installation's local visitor registration and entry control procedures shall be deemed the equivalent of obtaining the advance consent of the commander for entrance upon the installation for the purpose of this subpart. Authorization to enter one naval installation or a portion of one installation does not necessarily include the authorization to enter any other naval installation or all portions of an installation.

§ 770.30 Violations.

(a) Any person entering or remaining on a naval installation in the State of Hawaii, without consent of the commander or his authorized representative, shall be subject to the penalties of a fine of not more than $500 or imprisonment for not more than six months, or both. See 18 U.S.C. 1382.

(b) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed $5,000 or imprisonment for one year, or both. See 50 U.S.C. 797.

§ 770.31 List of major naval installations in the State of Hawaii and cognizant commanders authorized to grant access under these regulations.

(a) *On Oahu.* (1) Naval Base, Pearl Harbor (including the Naval Station, Naval Submarine Base, Naval Shipyard, Naval Supply Center, Naval Public Works Center, Marine Barracks, Ford Island, Bishop Point Dock Area, Commander-in-Chief Pacific Fleet and Commander Naval Logistics Command Headquarters Areas, Johnson Circle Navy Exchange/Commissary Store Area, Navy-Marine Golf Course, miscellaneous other commands, and areas within the Naval Base, Pearl Harbor complex, and the waters of Pearl Harbor). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(2) Naval Western Oceanography Center, Pearl Harbor. Contact:

Commanding Officer, Naval Western Oceanography Center, Box 113, Pearl Harbor, Hawaii 96860.

(3) Naval Air Station, Barbers Point. Contact:

Commanding Officer, Naval Air Station, Barbers Point, Hawaii 96862.

(4) Naval Communication Area Master Station, Eastern Pacific, Wahiawa. Contact:

Commanding Officer, Naval Communication Area Master Station, Eastern Pacific, Wahiawa, Hawaii 96786.

(5) Naval Magazine (Lualualei, Waikele, and West Loch). Contact:

Commanding Officer, Naval Magazine, Lualualei, Hawaii 96792.

(6) Naval Radio Transmitting Facility, Lualualei. Contact:

Commanding Officer, Naval Base, Pearl Harbor, Hawaii 96860.

(7) Naval and Marine Corps Reserve Training Center, Honolulu. Contact:

Commanding Officer, Naval and Marine Corps Reserve Training Center, Honolulu,

530 Peltier Avenue, Honolulu, Hawaii 96818.

(8) Military Sealift Command Office. Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(9) Mauna Kapu (Pacific Missile Range Facility). Contact:

Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, Kauai, Hawaii 96752.

(10) Kunia Facility; FORACS III Sites; Degaussing Station, Waipio Peninsula; Damon Tract (Remanant) Opana Communciations Site. Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(11) Outlying areas of the Naval Supply Center, Pearl Harbor (including the Ewa Junction Storage Area, Ewa Drum Storage Area, Manana Supply Area, Pearl City Supply Area, and the Red Hill Fuel Storage Area). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(12) Pump Stations (Halawa, Waiawa, Red Hill, and Barbers Point). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(13) Halawa Water Storage Area; Barbers Point, Independent Water Supply Reservoir Site; Sewage Treatment Plant; Fort Kam (tri-service); Utility Corridors, Lynch Park (Ohana Nui). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(14) Navy housing areas (including Moanalua Terrace, Radford Terrace, Makalapa, Maloelap, Halsey Terrace, Catlin Park, Hale Moku, Pearl Harbor, Naval Shipyard, McGrew Point, Halawa, Hokulani, Manana, Pearl City Peninsula, Red Hill, Iroquois Point, Puuloa, and Camp Stover). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(b) *On Kauai.*

(1) Pacific Missile Range Facility, Barking Sands, Kekaha.

Contact: Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, Hawaii 96752.

(c) *Other areas.*

(1) Kahoolawe Island. Contact:

Commander, Third Fleet, Pearl Harbor, Hawaii 96860. Also see 32 CFR 763.

(2) Kaula. Contact:

Commander, Third Fleet, Pearl Harbor, Hawaii 96860.

Subpart D—Entry Regulations for Naval Installations and Property in Puerto Rico

SOURCE: 46 FR 22756, Apr. 21, 1981, unless otherwise noted.

§ 770.35 Purpose.

The purpose of this subpart is to promulgate standard regulations and procedures governing entry upon U.S. Naval installations and properties in Puerto Rico.

§ 770.36 Definitions.

For purposes of these regulations, U.S. Naval installations and properties in Puerto Rico include, but are not limited to, the U.S. Naval Station, Roosevelt Roads (including the Vieques Island Eastern Annexes, consisting of Camp Garcia, the Eastern Maneuver Area, and the Inner Range); the Naval Ammunition Facility, Vieques Island; and the Naval Security Group Activity, Sabana Seca.

§ 770.37 Background.

In accordance with 32 CFR 765.4, Naval installations and properties in Puerto Rico are not open to the general public, *i.e.*, they are "closed" military bases. Therefore admission to the general public is only by the permission of the respective Commanding Officers in accordance with their respective installation instructions.

§ 770.38 Entry restrictions.

Except for duly authorized military personnel and civilian employees, including contract employees, of the United States in the performance of their official duties, entry upon any U.S. Navy installation or property in Puerto Rico at anytime, by any person

for any purpose whatsoever without the advance consent of the Commanding Officer of the installation or property concerned, or an authorized representative of that Commanding Officer, is prohibited.

§ 770.39 Entry procedures.

(a) Any person or group of persons desiring to obtain advance consent for entry upon any U.S. Naval installation or property in Puerto Rico from the Commanding Officer of the Naval installation or property, or an authorized representative of that Commanding Officer, shall present themselves at an authorized entry gate at the installation or property concerned or, in the alternative, submit a request in writing to the following respective addresses:

(1) Commanding Officer, U.S. Naval Station, Roosevelt Roads, Box 3001, Ceiba, Puerto Rico 00635.

(2) Officer in Charge, Naval Ammunition Facility, Box 3027, Ceiba, Puerto Rico 00635.

(3) Commanding Officer, U.S. Naval Security Group Activity, Sabana Seca, Puerto Rico 00749.

(b) The above Commanding Officers are authorized to provide advance consent only for installations and properties under their command. Requests for entry authorization to any other facility or property shall be addressed to the following:

Commander, U.S. Naval Forces, Caribbean, Box 3037, Ceiba, Puerto Rico 00635.

(c) Each request for entry will be considered on an individual basis and consent will be determined by applicable installation entry instructions. Factors that will be considered include the purpose of visit, the size of party, duration of visit, destination, security safeguards, safety aspects, and the military resources necessary if the request is granted.

§ 770.40 Violations.

Any person entering or remaining on U.S. Naval installations and properties in Puerto Rico, without the advance consent of those officials hereinabove enumerated, or their authorized representatives, shall be considered to be in violation of these regulations and therefore subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months, or both," or any other applicable laws or regulations.

PARTS 771–774—[RESERVED]

PART 775—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 4321-4361; 40 CFR Parts 1500-1508

SOURCE: 46 FR 22893, Apr. 22, 1981, unless otherwise noted.

§ 775.1 Purpose.

To supplement Department of Defense (DOD) regulations by providing policy and assigning responsibilities to the Navy and Marine Corps for the implementation of the Council on Environmental Quality's (CEQ) regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) appearing at 40 CFR Parts 1500-1508.

§ 775.2 Scope.

The policies and responsibility assignments of this instruction apply to the Office of the Secretary of the Navy, the Navy Department, and the Navy and Marine Corps operating forces and shore establishment. This

rule is limited to the actions of these elements with environmental effects in the United States.

§ 775.3 Policy.

(a) The Department of the Navy (DON) must act with care to ensure, to the maximum extent possible, that in carrying out its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decisionmaking tool this process will be integrated with other Navy-Marine Corps project planning at the earliest possible time. This insures that planning and decisionmaking reflect environmental values, avoid delays later in the process, and avoid potential conflicts. Care must be taken to ensure that, consistent with other considerations of national policy and with national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The DoN shall:

(1) Assess environmental consequences of proposed naval actions that could affect the quality of the environment in the United States in accordance with DOD and CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man's environment;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Use ecological information in planning and developing resource-oriented projects.

§ 775.4 Responsibilities.

(a) The Deputy Under Secretary of the Navy shall:

(1) Advise the Secretary of the Navy on the formulation of DoN policy regarding NEPA compliance.

(2) Maintain coordination with the CEQ, the Environmental Protection Agency (EPA), the Deputy Assistant Secretary of Defense (Energy, Environment and Safety), other DOD components and Federal agencies concerned with NEPA matters, and with private environmental groups as applicable.

(3) Approve and forward Environmental Impact Statements (EIS) to the EPA and to other appropriate agencies for review and comment.

(4) Approve and forward Findings of No Significant Impact for publication in the FEDERAL REGISTER for those actions of national concern that the Navy/Marine Corps has determined will not have a significant effect on the human environment and for which an EIS will not be prepared.

(5) Approve and publish a Record of Decision which will summarize for the public record the decision made by the Navy/Marine Corps among the alternatives presented in a Final EIS. The

Record shall include publication in the FEDERAL REGISTER and may, as appropriate, include notification as identified in 40 CFR 1506.6.

(6) Maintain liaison with the Chief of Information, who will coordinate with the Assistant Secretary of Defense (Public Affairs) those environmental matters which have significant public affairs implications.

(b) The Chief of Naval Operations, or his designee, and the Commandant of the Marine Corps, or his designee, are responsible, within their respective services, for NEPA compliance, which includes:

(1) Implementing DoN policy regarding the protection of the environment to include NEPA compliance.

(2) Advising commands in cases of necessity of the requirement for submitting environmental assessments or impact statements.

(3) Coordinating as appropriate with the President's CEQ, the EPA, the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (MRA&L), the Assistant Secretary of the Navy (MRA&L), the Deputy Under Secretary of the Navy, and other DOD components and Federal agencies concerned with environmental matters.

(4) Serving as the points of contact for DoN environmental matters.

(5) Coordinating, as appropriate, with the Chief of Information for the release to the public of environmental assessments, impact statements, final Findings of No Significant Impact, and other environmental documents, according to the Freedom of Information Act and other applicable Federal laws.

(6) Providing assistance for actions initiated by private persons, state or local agencies and other non-DoN/DOD entities for which DoN involvement may be reasonably foreseen.

(7) Identifying major decision points in the chain of command where environmental effects shall be considered. Examples of such decision points are the Chief of Naval Material for systems development and construction, and Fleet Commanders for matters involving operations, training, readiness, etc.

(8) Ensuring that relevant environmental documentation accompanies all proposals for action through the appropriate review process, so that such information is available to the decision maker.

(c) The Chief of Naval Operations and the Commandant of the Marine Corps are to comply with this instruction by subsequently directing subordinates to:

(1) Ensure all appropriate instructions include the requirement and funding for environmental documentation, as required;

(2) Conduct analyses of the environmental effects of current and proposed actions in accordance with DOD regulations, the regulations of the CEQ (40 CFR Parts 1500-1508), and other applicable regulations;

(3) Encourage, to the extent practicable, citizen participation in environmental evaluations of projects or programs;

(4) Evaluate environmental impacts at initial planning stages and at each following significant step or decision milestone in the development of a project or program, as warranted.

§ 775.5 Classified actions.

The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with the NEPA. Nevertheless, the EIS, both draft and final, as well as supplements, shall be prepared, safeguarded and disseminated in accordance with the requirements applicable to classified information. When feasible, these documents shall be organized in such a manner that classified portions are included as annexes so that the unclassified portions can be made available to the public.

§ 775.6 Planning considerations.

When integrating the NEPA process into early stages of proposed naval actions, addressees will determine as early as possible whether to prepare an EIS.

(a) To identify those actions that normally require the preparation of an EIS, the following criteria are provided:

(1) Potential for significant degradation of environmental quality—as, for example, the establishment of a new operating base;

(2) Potential for threat or hazard to the public—as for example, the establishment of a new training area;

(3) Potential for significant impact on protected natural or historic resources—as, for example, the proposed destruction of an existing sitestructure to make way for new construction.

(b) In any case involving a proposed action of the sort that normally requires an EIS, the command responsible for preparation of the appropriate documentation may still prepare an environmental assessment to determine if an EIS is required based on the facts. If a determination is made on the environmental assessment that no EIS is required on the particular facts, a Finding of No Significant Impact will be prepared and made available to the public in accordance with CEQ regulations.

(c) CEQ regulations provide for the establishment of categorical exemptions (40 CFR 1507.3(b)) for those actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an EIS is required. Considerations to assist in identifying categories of actions that normally do not require either an EIS or an environmental assessment include:

(1) Minimal or no significant effect on environmental quality;

(2) No significant change to existing environmental conditions;

(3) No significant cumulative environmental impact;

(4) Social and economic effects only;

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(d) Although extraordinary circumstances may arise in which normally excluded actions may have a significant effect, and therefore generate a requirement for environmental analyses, typical classes of action which are categorically excluded are:

(1) An action the effects of which are included in a previously written assessment, or draft or final EIS.

(2) Preparation of regulations, directives, manuals, or other guidance documents that implement, without substantial change, the regulations, directives, manuals, or other guidance documents from higher headquarters or another Federal agency.

(3) Emergency activities (*e.g.*, riot control or search and rescue activities). These do not require assessments or an environmental statement. Emergency situations generating a response by naval authorities which result in significant harm to the environment shall be reported to the Secretary of the Navy, who will facilitate consultation with the CEQ.

(4) Routine movement of mobile sources, such as the assignment of ships and aircraft to perform as operational groups and/or their assignment for repair and overhaul, for example.

(5) Routine maintenance and repair, such as repair of naval systems and equipment aboard naval bases and stations.

(6) Reductions in force wherein there is not an interrelation with natural or physical environmental effects.

(7) Continuing actions if there is no substantial, adverse change from previously existing conditions, and it has been determined that there were no prior natural or physical environmental effects.

(8) Minor training exercises on military property, assuming all applicable environmental and natural resource conservation laws have been complied with.

(9) Land and facility transfers to another Federal agency wherein the General Services Administration is the action agency.

(10) Regulations which do not significantly affect the quality of the human environment in their implementation.

(11) Routine procurements for goods and resources.

(12) Basic and applied scientific research normally confined to the laboratory in question and again assuming that all applicable environmental and natural resource conservation laws have been complied with.

(13) Studies that involve no commitment of resources other than manpower and funding allocations.

(14) Proposed actions that, based on sound judgment, are of such an environmentally insignificant nature that they clearly do not meet the threshold for requiring an environmental assessment or EIS.

(15) Other categories as identified by the Chief of Naval Operations, or his designee, and/or the Commandant of the Marine Corps, or his designee, in appropriate directives implementing this instruction. In the identification of additional categories, the approval of the Secretary of the Navy shall be obtained prior to their implementation.

(e) When a proposed action is not one that normally requires an EIS and does not qualify for categorical exemption, an environmental assessment shall be prepared.

§ 775.7 Time limits for environmental documents.

The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of the NEPA. Commencement of the NEPA process shall be undertaken as early as possible in the decisionmaking process.

(a) The EPA publishes a weekly notice in the FEDERAL REGISTER of the environmental impact statements filed during the preceding week. The following time periods calculated from publication of the EPA notice are applicable:

(1) Draft statements should be available to the public for 15 days prior to any public hearing on the Draft EIS (40 CFR 1506.6(c)(2)).

(2) Not less than 45 days from publication of notice of filing shall be allowed for public comment on Draft statements prior to filing of the Final EIS (40 CFR 1506.10(c)).

(b) Prior to any decision on the proposed action, Draft statements shall be available to the public for not less than 90 days. Final statements which shall be published after public review and comment shall similarly be available to the public for at least 30 days. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

§ 775.8 Scoping.

As soon as practicable after the proponent of a DoN project or action decides to prepare an EIS, an early and open process called "scoping" shall be used for determining the scope of issues to be addressed and for identifying the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

§ 775.9 Documentation and analysis.

Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

§ 775.10 Relations with state, local and regional agencies.

Close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, counties, and states, for cooperation and resolution of mutual land use and environment-related problems should be established. Additional coordination may be obtained from state and area-wide planning and development "clearinghouses". These are agencies which have been established pursuant to the Office of Management and Budget Revised Circular A-95, "Federal and Federally-assisted Programs and Projects", 38 FR 32874 (28 November 1973). Since the A-95

clearinghouses serve a review and coordination function for Federal activities, the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. They would also be able to assist in identifying possible participants in scoping procedures for projects requiring and EIS.

§ 775.11 Public participation.

The importance of public participation in preparing environmental assessments shall be recognized (40 CFR 1501.4(b)). In determining the extent to which public participation is practicable, the following are among the factors to be weighed by the command preparing the environmental documentation:

(a) The magnitude of the proposed action;

(b) The extent of anticipated public interest; and

(c) Any relevant questions of national security classification.

§ 775.12 Action.

The Chief of Naval Operations and the Commandant of the Marine Corps shall, each, as appropriate:

(a) Provide guidelines and procedures for administrative direction and implementation of this rule and CEQ regulations; and

(b) Maintain a focal point for the coordination of the preparation of environmental assessments and impact statements.

PARTS 776–799—[RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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705.23 (e) amended.....Δ6391
705.24 (c)(1) introductory text and (4) revised; (c)(2)(ii) amended.....Δ6391
705.25 (b) removed.....Δ6391
705.26 (b) amended.....Δ6391
705.29 (b)(3) introductory text and (c) revised; (d)(1) amended.....Δ6391
705.34 (a) and (e) revised.....Δ6391
705.36 (c)(1) revised; (c)(4)(i) and (9)(ii) removed; (c)(4) (ii) and (iii) and (9)(iii) redesignated as (c)(4) (i) and (ii) and (9)(ii).....Δ6391
705.37 (d)(2) removed; (d) (3) and (4) redesignated as (d) (2) and (3).....Δ6391
706.2 Tables amended.....29942, 33709, 36070, 49536, 49537
Tables amended.....Δ22455, 24286
706.3 Table amended.....33710, 49536
Table amended.....Δ24287
707.5 Amended.....Δ27991
714 Removed.....Δ24060
716.2 (a)(4)(ii) removed; (a)(4) amended.....Δ25647
716.5 (b) amended.....Δ25647
716.7 (b) heading revised; (b)(1) amended.....Δ25647
716.8 (b) amended.....Δ25647
716.9 Amended.....Δ25647

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716.10 (a)(2), (b)(1), (c) (1) and (2) amended Δ25647
716.11 (b)(2) and (c) removed; (b) amended Δ25648
718.3 (a) amended; (d)(3) revised Δ22456
718.4 Amended Δ22456
729 Removed Δ24060
744.2 Removed Δ30686
744.3 Removed Δ30686
744.4 Removed Δ30686
744.5 Removed Δ30686
744.6 (a), (b), and (c) amended Δ30686
744.7 Removed Δ30686
744.8 Removed Δ30686
751.3 (b)(2) and (i) correctly designated 33241
751.21 (g) correctly designated 33241
765.13 (d) revised Δ37610
770.15—770.20 (Subpart B) Added Δ32368

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701.6 (c) amended *8598
701.7 (c)(1), and (2) (i) and (ii) amended *8599
701.8 (a) amended *8599
701.9 (d)(1), (2)(ii), and (3) amended *8599
701.40 (c)(1) (a), (b), and (c) redesignated as (c)(1) (i), (ii), and (iii) *8599
701.56 (a)(4)(i) amended *8599
701.57 (b) introductory text and (c)(2) amended *8599
701.121 Revised 46272
701.123 (e) and (l) revised 46272
706 Authority citation revised *43165
706.1 (d) and (f) amended *43165
706.2 Heading amended *43165
Tables amended 55336, 56930, 57401, 67114
Tables amended *17580, 31117, 32672, 41412
706.3 Table amended *32672

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NOTE: Asterisk (*) refers to 1980 page numbers.

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715 Removed 42190
716.10 (b)(1) amended *43165
720.2 (a) and (b)(1) amended *8599
720.3 (b) amended *8599
720.4 Amended *8599
720.5 Amended *8599
720.8 (b)(1) and (d) amended *8599
720.15 (b) amended *8599
720.20 (c)(3) and (d)(1) amended *8599
720.21 Amended *8599
720.31 Revised *8599
722.3 (b)(2) amended *8599
724 Revised 66802
Appendixes A through E added 76486
728.93 (b)(2)(*a*) through (*n*) redesignated as (b)(2)(i) through (xiv) *8599
730.51 (m) amended *8600
730.73 (c)(10) amended *8600
730.75 (m) amended *8600
733 Added 42190
734 Added 42193
737.32-304 Amended *8600
750.1 (a) amended *8600
750.24 (a)(1), (3) and (4) amended *8600
750.36 (c)(10) amended *8600
750.52 (e) amended *8600
750.55 (d)(5) amended *8600
750.73 (b) amended *8600
755.3 (a) amended *8600
755.5 (a) amended *8600
757.8 (1) through (5) redesignated as (a) through (e) *8600
770.25—770.31 (Subpart C) Added 76279

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700.201 Amended 80277
700.202 (a) amended 80277
700.203 (e) removed; (f) and (g) redesignated as (e) and (f); (a), (b), (d), new (e), new (f), and (h) amended; new (g) added 80277

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700.204 Amended	80278
700.205 Amended	80278
700.206 (b) amended	80278
700.301 (c) amended	80278
700.305 (d) redesignated as (e); new (d) added	80278
700.315 Amended	80278
700.316 Revised	80278
700.320 (a) amended; (b) removed	80278
700.401 (b) revised	80278
700.752 (a), (b), and (c) amended; (e) redesignated as (f); new (e) added	80279
700.753 Heading amended; added	80279
700.1116 (c) amended	80279
700.1146 Removed	80279
706.2 Table four amended	46381
Tables one and two amended	49548
Tables one and four amended	49549
Tables one and three amended	54754, 76685
Table four amended; table five added	66008
Table four amended	69447
Table four amended	†5962
Tables one and four amended	†14342
Table four amended	:†32023
762 Nomenclature changes	†18313
763 Revised	51776
770.35-770.40 (Subpart D) Added	†22756
775 Added	†22893

NOTE: Symbol (†) refers to 1981 page numbers.

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701.104 (a)(3) correctly amended	60445
Correctly designated	62267
706.2 Tables one and four amended	35503
Tables one and three amended	43664, 46323, 46924
Tables four and five amended	46324, 46925, 47219
Table four corrected	49121
Tables one and four amended	53661
Tables four and five amended	55254
Table four amended	Δ4990
Tables one, three and four amended	Δ6009
Tables one and three amended	Δ6010
Tables two and four amended	Δ7223
Tables one and four amended	Δ19518
754.2 (a) introductory text and (1) through (3) revised; (b), (d), and (g) amended	Δ6011

NOTE: Symbol (Δ) refers to 1982 page numbers.